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ABSTRACT

A major battle is being waged in Congress between supporters of proposals to legislate a tax credit for tuition payments to educational institutions and supporters of the administration's alternative proposal, which would build on existing grant and loan programs. Opponents of tuition tax credits are divided between those who feel that no tax relief is necessary and those who instead support the administration's proposal to expand existing grant and loan programs. Supporters of tax credits believe that as the cost of education coninues to rise, middle-income families will be deprived of any realistic choice about the education of their children, and that eventually nonpublic and parochial schools will virtually disappear. Explored here are the background of the issue (including campaign commitments and existing federal programs), action on tuition tax credits in prior Congresses, action in the 95th Congress, and the arguments about need, cost implications, burden and complexity, effect on social goals, effect on public schools, effect on nonpublic schools, and constitutional concerns. (Author/MSE)

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AMERICAN ENTERPRISE INSTITUTE
LEGISLATIVE ANALYSES

Tuition Tax Credits and Alternatives

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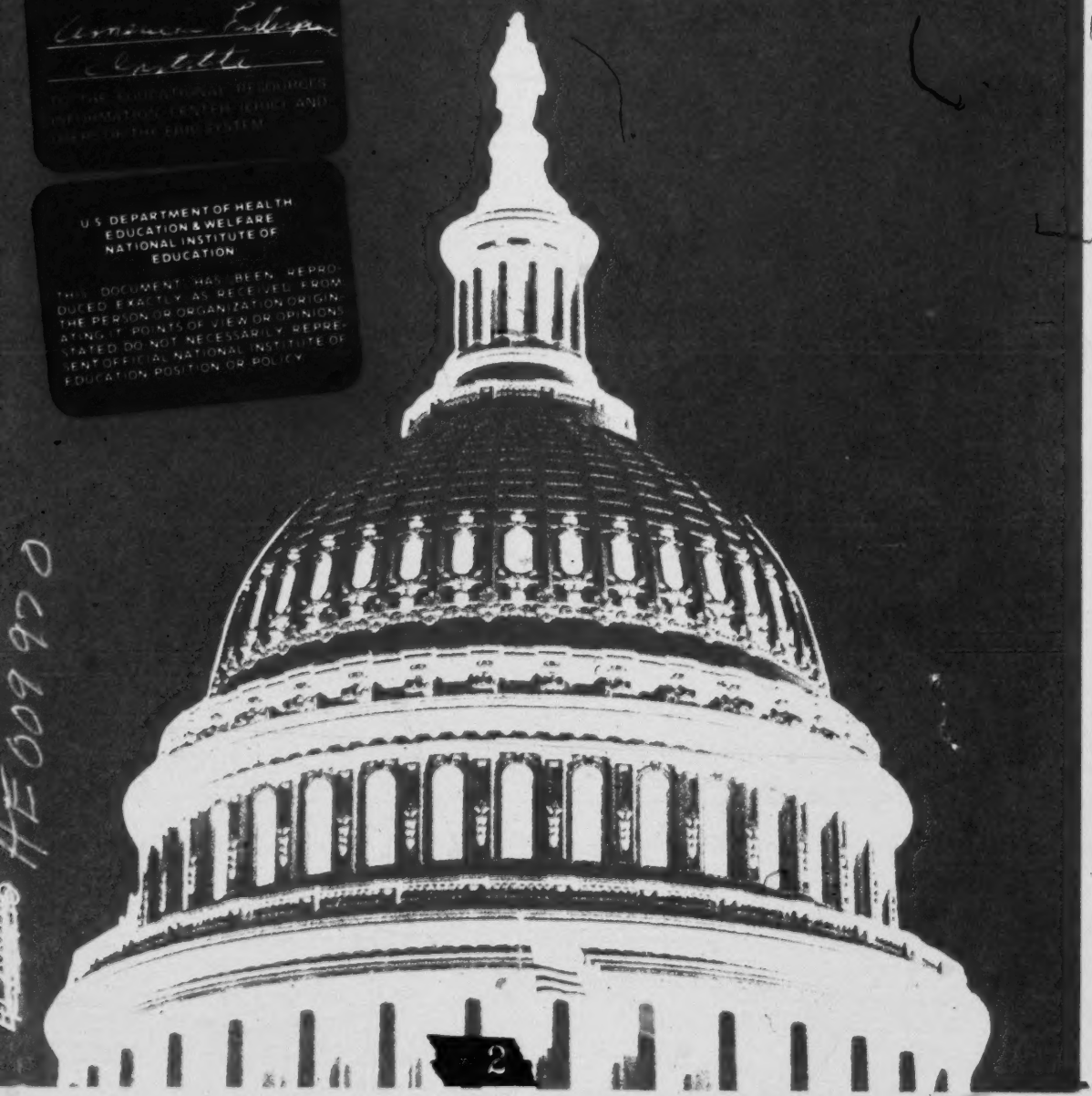

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INTRODUCTION

A major battle is being waged in Congress between supporters of proposals to legislate a tax credit for tuition payments to educational institutions and supporters of the administration's alternative proposal, which would build on existing grant and loan programs. President Carter and the supporters of tuition tax credits are agreed on the need to provide relief from rising educational costs to middle-income families. They are not in agreement about the method for providing such relief. Supporters of tax credits themselves disagree about the extension of tax credits to families of pupils in elementary and secondary schools.

Opponents of tuition tax credits are divided between those who feel that no tax relief is necessary and those who instead support the administration's proposal to expand existing grant and loan programs. At stake are fundamental political differences and differences about education policy. Supporters of tax credits believe that, as the cost of education continues to rise, middle-income families—a substantial portion of whose taxes are used to support public schools—will be deprived of any realistic choice about the education of their children, and that, eventually, nonpublic and parochial schools will virtually disappear.

Opponents of tuition tax credits believe that the choice of private education should be made at the individual's own expense. Half the senators and over half the representatives are sponsoring some form of tax relief for tuition payments. Until President Carter and Secretary Joseph Califano of the Department of Health, Education, and Welfare (HEW) formulated an alternative program, the adoption of a tuition tax credit proposal in this Congress appeared certain.

BACKGROUND

Back in 1970, President Nixon established the President's Panel on Nonpublic Education, within the President's Commission on School Finance, to study the problems of nonpublic schools and to make recommendations for legislative action. This panel issued its report, *Nonpublic Education and the Public Good*,[1] on April 14, 1972. Among its recommendations was "prompt enactment by Congress of legislation to authorize Federal income tax credit to parents for part of tuition payments to nonpublic elementary and secondary schools."

Campaign Commitments

In his 1972 campaign for reelection, President Nixon supported tuition tax credits for parents of children who attend elementary and secondary schools. On October 25, 1972, in a nationwide radio address, he stated: "Just as in the last Congress this Administration supported a tax credit for parents of children attending nonpublic schools, so I am irrevocably committed to seeking tax credit legislation in the next Congress, since the last Congress did not act."[2]

In 1976 both the Republican and Democratic platforms supported the concept of relief to students and parents at the elementary, secondary, and higher education levels. In promising aid for elementary and secondary pupils, the Democratic platform declared:

> The party renews its commitment to the support of a constitutionally acceptable method of providing tax aid for the education of all pupils in nonsegregated schools in order to insure parental freedom in choosing the best education for their children. Specifically, the party will continue to advocate constitutionally permissible federal education legislation which provides for the equitable participation in federal programs of all low and moderate income pupils attending the nation's schools.

As for aid to postsecondary students, the Democratic platform stated:

> The federal government and the states must develop strategies to support institutions of higher education from both public and private sources. The federal government should directly provide cost of education payments to all higher education institutions, including predominantly black colleges, to help cover per-student costs, which far exceed those covered by tuition and fees.

Concerning aid to parents of elementary and secondary pupils, the Republican platform stated: "We favor consideration of tax credits for parents making elementary and secondary school tuition payments. . . . Diversity in education has great value. . . .

Public schools and nonpublic schools should share an education fund on a constitutionally acceptable basis." The Republicans also affirmed their support of aid to college students and others in higher education: Their platform called for "a program of tax credits for payments of college and higher education tuition payments in both publicly supported and private, including sectarian, institutions."[3]

Many supporters of tax credits point to a campaign promise that President Carter made during his presidential campaign in 1976. On October 19, 1976, candidate Jimmy Carter issued the following message to a national meeting of nonpublic school administrators in St. Petersburg, Florida: "I am firmly committed to finding constitutionally acceptable methods of providing aid to parents whose children attend parochial schools. I am firmly committed to seeing that children attending parochial schools benefit fully from federal education programs."[4]

Existing Federal Programs

There are currently five federal tax expenditure programs that directly assist students who attend colleges and universities, and four more that aid students indirectly by assisting educational institutions. The income tax exemption for student dependents allows a taxpayer to claim a student as a dependent for tax purposes, even if he would otherwise be ineligible as a dependent because he is over nineteen years of age or because he has an adjusted gross income greater than $750. This tax provision benefits families which have tax liabilities and children with earnings. Students who have other taxable income or whose spouses have taxable income benefit from the exclusion of fellowships and scholarships from taxable income. The exclusion of GI bill educational benefits from taxable income aids veterans who choose to attend school. The exclusion of social security benefits for students assists those families in which the head of household is disabled, retired, or deceased, and in which there is a student eighteen to twenty-one years old. The deductibility of educational expenses incurred in pursuing one's trade or business aids certain other taxpayers.

The four tax provisions that assist students indirectly by providing aid to educational institutions are: the deductibility of gifts and bequests to educational institutions; the exclusion of unrealized capital gains on these charitable contributions; the deductibility of state and local taxes used for higher education in computing income tax liability; and the exemption of interest on state and local borrowing for higher education.[5]

Several federal programs, administered outside the tax structure, provide direct aid to postsecondary students.

Basic Educational Opportunity Grants (BEOG) were established in 1972 to provide aid to students who carry at least half of a normal full-time load at colleges, postsecondary vocational schools, and technical or trade institutions. Student eligibility is based on need, which is determined by an annually reviewed formula that takes into account such factors as family income, assets, taxes, number of wage earners, and family size.

Supplemental Educational Opportunity Grants (SEOG), formerly called Educational Opportunity Grants, were established in 1965. These funds flow through institutions to students of exceptional financial need, which is determined by the institutions, using national criteria. The size of the grant is based on the student's financial need, and ranges from $200 to the lesser of $1,500 per academic year or half the total financial aid provided to the student by the institution. President Ford proposed to eliminate SEOG on the ground that it duplicated BEOG.

The College Work/Study Program (CWSP) was established in 1965 to assist financially needy students by providing them with part-time work. Educational institutions combine CWSP jobs with grants and loans to form "packages" of aid to students. Under this program, public and private nonprofit institutions are reimbursed for 80 percent of the wages paid to students, through federal CWSP grants.

The State Student Incentive Grant Program (SSIG) provides grants to states, on a one-on-one matching basis, to assist them in providing grants to individual undergraduate students at institutions of higher education. Such grants are based on financial need. Eligibility was broadened in 1976 to include students who attend nonprofit institutions of higher education, unless state constitutional prohibitions stand in the way.

The National Direct Student Loan Program (NDSL) was established in 1958. It provides long-term, low-interest loans to needy students at eligible postsecondary institutions. For this purpose, a revolving loan fund is created at each institution, with 90 percent of the capital provided by the federal government and 10 percent provided by the institution. Loans generally bear 3 percent interest, beginning nine months after the student ceases at least part-time attendance. President Ford recommended phasing out the NDSL program (formerly called the National Defense Student Loan program) on the ground that it duplicated the Guaranteed Student Loan program.

The Guaranteed Student Loan Program (GSL) was established in 1965 to help students borrow the cost of training at colleges, universities, and postsecondary vocational schools from private lenders. Loans carry a 7 percent interest charge to the student and are either guaranteed by a state or a private nonprofit agency or insured by the federal government. A maximum loan of $2,500 per academic year ($5,000 for graduate training) may be applied for in most states, if the costs of education warrant this amount. A student from a family with maximum adjusted gross income of $25,000 (formerly $15,000) is eligible for an interest subsidy, that is, the federal government pays the interest while the student is enrolled.

The GI Bill, that currently provides virtually all of a veteran's educational expenses, was enacted in 1966. It covers those who served in the armed forces from February 1955 through December 1976 and grants up to forty-five months of benefits for veterans enrolled in approved courses of instruction. Under this program, the veteran receives a monthly allowance for living expenses as well as education costs.

The most recent veterans' educational benefits program was enacted in October 1976 and covers those entering the service after December 1976. The new program differs from the

previous ones in that those who wish to participate must make contributions while they are in the service. The federal government matches each dollar of a participant's contribution with two dollars.

Social Security Student Benefits were initiated in 1965 and are paid to those eighteen to twenty-one years old who are unmarried, full-time student dependents of dead, disabled, or retired workers. Currently about one-eighth of all full-time enrolled students in this age group draw such benefits, averaging over $1,900 a year per student according to one report.[6]

Table 1 provides a breakdown of all sources of support for the college costs of a 1975 entering freshman.

Table 1
Percentage of Total College Costs Paid from Various Sources, by Income Level

Source	Parental Income Level: Less than $8,000	$8,000 to $19,999	$20,000 or more	All students
BEOG	27.0	7.3	1.5	8.3
SEOG	3.2	1.1	.2	1.1
State scholarship	5.9	4.7	1.4	3.7
Local, private scholarship	4.0	4.5	2.6	3.8
Students' GI benefits	1.9	1.0	.4	.9
Parents' GI benefits	1.0	.6	.3	.5
Social security dependents' benefits	5.4	1.8	.7	1.9
Total grants	48.4	21.0	7.1	20.2
Parents or family	18.6	36.8	62.9	43.1
Spouse	.7	.4	.3	.4
Total family assistance	19.3	37.2	63.2	43.5
Total grants and family assistance	67.7	58.2	70.3	63.7
College work/study	4.3	2.3	.6	2.0
Federal guaranteed student loan	2.6	3.6	1.8	2.8
National direct student loan	3.0	2.6	.7	2.0
Other loan	1.3	2.0	1.3	1.6
Full-time work	2.0	2.5	1.8	2.2
Part-time work	10.0	15.5	12.2	13.5
Savings	7.0	11.2	9.4	9.9
Other financing	2.0	1.9	1.8	1.9
Student net cost	32.2	41.6	29.6	35.9
Grand total	99.9	99.8	99.9	99.6

Note: BEOG stands for Basic Educational Opportunity Grants; SEOG stands for Supplemental Educational Opportunity Grants. Totals do not equal 100 percent because of rounding.

Source: U.S. Congress, House of Representatives, Committee on Ways and Means, *Description of Tax Benefits and Other Proposals Relating to Assistance for Educational Expenses*, 95th Congress, 2nd session, February 13, 1978, p. 6 (prepared by the Staff of the Joint Committee on Taxation). Unpublished analyses conducted by the Higher Education Research Institute based on data from the national survey of freshmen entering college in 1975 as reported in A. W. Astin, M. R. King, and G. T. Richardson, "The American Freshman," Laboratory for Research in Higher Education, University of California, Los Angeles, 1975.

ACTION ON TUITION TAX CREDITS IN PRIOR CONGRESSES

During the 1950s the most common legislative proposals for tax relief for education expenses were bills to provide deductions from adjusted gross income. Other proposals called for additional personal exemptions for each student in the family. During the 1960s tax credit proposals became more popular.

Senate

From 1967 to 1977 six education tax credit proposals passed the Senate. Senator Abraham Ribicoff (D-Conn.) was the first senator to pursue tax benefits for college tuition persistently. In 1967 he sponsored an amendment which would have provided taxpayers a tax credit for college expenses equal to 75 percent of the first $200 of expenses, 25 percent of the next $300, and 10 percent of expenses between $500 and $1,500. This credit would have been reduced by 1 percent of the taxpayer's adjusted gross income above $25,000. Ribicoff's amendment became the first Senate-approved education tax credit measure. In 1969 a slightly revised proposal sponsored by Senator Ribicoff again passed the Senate. It would have benefited higher income taxpayers somewhat less. Neither proposal passed the House.

In 1971 the Senate passed a provision identical to the 1967 Ribicoff proposal except that the tax credit would have been refundable, that is, a family would have received a cash refund to the extent that it owed no income taxes to which the credit could be applied. This amendment, introduced by Senator Ernest F. Hollings (D-S.C.), was dropped from H.R. 10947, the Revenue Act of 1971, in conference committee. The fourth Senate approval occurred in 1976 when Senator William V. Roth, Jr. (R-Del.) sponsored an amendment to provide a nonrefundable tax credit of up to $250 per student. This credit would have applied to 100 percent of expenses. Roth's amendment was added to H.R. 10612, the Tax Reform Act of 1976, but the conference committee dropped it. Also in 1976, the Senate passed this same proposal by Senator Roth as an amendment to H.R. 1386, a tariff bill, which died at the end of the 94th Congress.

Senator James Buckley (Cons. R-N.Y.) proposed a tax deduction for tuition in 1975, which is viewed as the forerunner of the widely publicized Packwood-Moynihan bill in the current Congress. Buckley's proposal, S. 2356, 94th Congress, 1st session, would have provided for a $1,000 deduction for tuition payments to institutions of higher education, vocational schools, and elementary and secondary schools. Buckley testified for the bill before the Senate Finance Committee during its 1976 hearings on the Tax Reform Bill, thereby setting the stage for the tax deduction to be offered as a floor

amendment on August 5, 1976. The amendment was rejected, however, by a 37–52 roll call vote.[7]

The sixth approval of tuition tax credit legislation in the Senate is discussed in the section below on "Action in the 95th Congress."

House of Representatives

The House has not matched the Senate's record of favorable action on tuition tax benefits. In 1972 the House Ways and Means Committee held extensive hearings on tax credits for nonpublic education.[8] Approximately 139 bills for elementary and secondary school tax credits were then pending in the House.

ACTION IN THE 95TH CONGRESS

Proposals to provide tax relief for educational expenses fall into four general categories: credits, deductions, elective (optional) credits or deductions, and deferrals. Because of the progressive or graduated income tax system in America, tax deductions result in greater savings to families and individuals in the higher tax brackets. Tax credits have the same cash value to taxpayers at all income levels. If an individual's income tax liability is less than the amount of tax credit to which he is entitled, however, the credit is not as valuable to him as it is to those with larger incomes. To rectify this, some tax credit proposals call for a cash refund of the unused portion of the tax credit. Elective credits or deductions give the family the choice between the credit or the deduction. Tax deferrals would provide the equivalent of low-interest-rate loans by allowing individuals to postpone payment of some taxes during years of heavy educational expenses.

Some proposals would provide relief for tuition payments for elementary, secondary, and higher education (including graduate and professional work) as well as vocational education. Some bills pertain exclusively to elementary and secondary schools; some to undergraduate institutions only; and some to undergraduate, graduate, and vocational students.

The types of expenses that are considered eligible for tax relief vary from bill to bill. Eligible expenses generally are those which are closely associated with a course of instruction, such as tuition and required fees, but some bills also include other expenses.

The bills also vary in terms of the limitations they place upon the amount of the credit or deduction. They may allow a credit or deduction of from 25 to 100 percent of expenses and provide maximum total benefits of from $250 to $1,000. Some bills restrict eligibility to full-time students, but most would apply to full-time and part-time students. Some of the bills would reduce the amount of credit for the student who is receiving tax-free scholarship and fellowship aid. On September 8, 1977, the House adopted an amendment to the budget resolution offered by Representative Lawrence Coughlin (R-Pa.). This amendment would reduce anticipated revenues by $175 million, in the expectation that tuition tax credits of up to $250 for full-time college and vocational school students would in fact be enacted and thereby reduce revenues by this amount. This amendment was adopted by a vote of 311–76. A similar amendment by Senator Roth was adopted in the Senate. A motion to table was defeated by a vote of 25–59.[9]

The Senate's sixth vote for tuition tax credits occurred in 1977 when it approved a $250 education tax credit proposal offered by Senator Roth as an amendment to H.R. 9346, the Social Security Financing Amendments of 1977. As modified in an amendment by Senator Dale Bumpers (D-Ark.), this provision would have allowed a refundable tax

credit for certain education expenses paid by an individual to institutions of higher education or vocational schools. (It did not include a tax credit for sums paid as tuition and expenses on behalf of elementary and secondary school pupils or for graduate school expenses.) The tax credit would have been allowed for 100 percent of eligible expenses, up to a maximum of $250 for any one individual. Tuition, fees, books, supplies, and equipment were eligible, but not meals and lodging. The credit would not have been allowed for expenses of part-time students. Senator Roth finally agreed to drop the tuition tax credit provision in order to break a deadlock over enactment of social security amendments, but he promised to bring tuition tax credit legislation up during the next session.

Senate Finance Committee Bill

On February 23, 1978, the Senate Finance Committee favorably reported a tuition tax credit bill which combined features of the Packwood-Moynihan bill (S. 2142) and the Roth bill (S. 311). The vote in the Senate Finance Committee was 14–1, with Senator Lloyd M. Bentsen (D-Tex.) opposing the bill, while Senator Harry F. Byrd, Jr. (I-Va.) voted present. The tuition tax credit bill was added by the committee as an amendment to a wool import duty bill, H.R. 3946, after three days of hearings on tuition tax credit bills.

The committee bill would implement tax benefits in three phases. For educational expenses incurred on or after August 1, 1978, a credit would be allowed for 50 percent of the amount paid, up to $250. During the first phase, the credit would apply only to full-time students in college and to postsecondary vocational school students. Two years later, on August 1, 1980, the credit would be broadened to cover students in elementary and secondary schools (including secondary vocational schools). The amount of the credit would increase to a maximum of $500. The last phase would begin one year thereafter, on August 1, 1981, when the $500 credit would also cover educational expenses for graduate and part-time students. According to the committee report, the maximum credit applies to each student, not to each family; and, therefore, a family with more than one student may take a tax credit for each.[10]

The bill allows the credit to be taken for educational expenses paid by an individual taxpayer to an eligible educational institution for himself, his spouse, or any of his dependents. Educational expenses are defined as tuition and fees required for enrollment or attendance at an eligible educational institution. They do not include books, supplies and equipment, meals, lodging, transportation, and other personal, living, and family expenses. They do not cover any costs for education below the first-grade level.

Eligible institutions are: institutions of higher education (as defined in the Higher Education Act of 1965), vocational schools (as defined in the Vocational Education Act of 1963), and elementary and secondary schools. Elementary and secondary schools are defined as in the Elementary and Secondary Education Act of 1965, if operated by a legally constituted local public school authority. If a school is privately operated, it must be accredited or approved under state law, and in states with no procedure for accredita-

tion or approval, it must meet the requirements of state law relating to compulsory school attendance. It must also have tax-exempt status from the Internal Revenue Service. Schools which discriminate on the basis of race could not qualify as eligible educational institutions because they are denied tax-exempt status.

The amount of educational expenses incurred would be reduced by scholarships or fellowships that are not includable in gross income, by educational assistance allowances provided to veterans, and by any other payment received for educational expenses which is exempt from income taxation, other than a gift, bequest, devise, or inheritance. If a taxpayer is claimed as a dependent by another taxpayer, then he may not take the tax credit. A credit is allowed for a spouse's educational expenses, however, if the taxpayer is entitled to an exemption for the spouse or if they file a joint return. If an individual claims a tuition tax credit for educational expenses, he may not claim a deduction or credit for these same expenses under any other section of the Internal Revenue Code (such as for job-related educational expenses). A taxpayer may elect not to claim the tuition tax credit, however, and instead claim the other deductions or credits to which he is entitled.

The tax credit is refundable to an individual to the extent his tax liability is less than the amount of the credit. The amount of the tax benefit or refund paid to any taxpayer is not considered income when determining eligibility for other federal educational assistance. The federal government is not granted authority under this bill to examine the books or activities of any sectarian school, except to determine whether the school is an eligible educational institution under this bill.

The bill provides for an expedited review of the constitutionality of any of its provisions by having an immediate hearing before a full U.S. Court of Appeals and an expedited appeal to the Supreme Court.

The Administration's Alternative

On February 7, 1978, President Carter announced his intention to increase his recommended budget outlays for college student assistance for fiscal 1979 by $1.2 billion, with most of the increase allocated to BEOG grants. On February 9, 1978, Secretary Califano testified in support of the administration's proposal before a hastily convened joint hearing of the Senate Committee on Human Resources and the House Committee on Education and Labor. He sought three changes in the existing law.

Secretary Califano testified for an increased appropriation for BEOG grants of $1 billion over the $2.1 billion currently appropriated. It was estimated that this would allow 3.1 million additional students to participate, raising the total from 2.2 to 5.3 million. In addition, the administration would (1) guarantee a $250 grant to 2.8 million students from families with an annual income of up to $25,000; (2) increase the maximum grant from $1,600 to $1,800 for students from families with incomes up to $8,650; (3) increase the amount of the average grant by $200 (from $850 to $1,050) to students in families with incomes between $8,000 and $16,000; and (4) eliminate inequities in the treatment

of self-supporting students, particularly those who have dependents. Nearly $700 million of the $1 billion increase would be concentrated on families with annual incomes between $16,000 and $25,000. Secretary Califano proposed to request an additional $165 million more than the $435 million appropriated in fiscal 1978 for CWSP to provide as many as 280,000 additional students with work opportunities, increasing the total to more than 1 million students. More than two-thirds of the CWSP increase would benefit 176,000 new students with family incomes over $16,000. An additional request for $297 million more than the $530 million appropriated in fiscal 1978 would expand the guaranteed student loan program. Families with incomes of up to $45,000 (up from $30,000) would be eligible for an interest subsidy worth as much as $250 per year.

S. 2539. Senators Claiborne Pell (D-R.I.), Harrison A. Williams, Jr. (D-N.J.), Jacob K. Javits (R-N.Y.), and Robert T. Stafford (R-Vt.) introduced S. 2539 as a modification of S. 2538, a bill introduced by Senator Pell and three cosponsors to carry out the President's recommendations for aiding students from middle-income families. S. 2539 departs from the President's recommendation of flat grants of $250 to students from families with incomes between $15,000 and $25,000 under the BEOG program. The committee bill would provide grants on a sliding scale proportional to need, at an estimated cost of $1.2 billion, to aid 1.5 million additional students. Current law requires a contribution of 20 percent of the first $5,000 in family income and 30 percent of any excess over that amount. S. 2539 would require that no more than 10.5 percent of family income be applied toward college education in determining eligibility for grant funds.

Mandatory minimum funding for the College Work/Study Program (CWSP), that is, the appropriation level which must be reached before basic education grants (BEOG) could be paid, would be increased by $262.6 million. The administration has not requested any increase for SEOG. The committee bill would increase the mandatory minimum for SEOG grants by nearly $240 million for fiscal 1979 ($100 million more than the budget request for that year) and by an additional $80 million for subsequent years. This would be particularly helpful to students at high-cost institutions. It is estimated that this first year increase would provide grants for an additional 182,000 students from middle-income families. An additional $100 million proposed by the administration for the (CWSP) program was not included because the Senate Committee on Human Resources felt that the required number of jobs could not be created.

The Guaranteed Student Loan program would be modified to provide a government subsidy for all interest payments due on loans during students' in-school period, regardless of family income. The President had proposed raising the ceiling on family adjusted gross income from $25,000 to $40,000 for those eligible for the interest subsidy. Under another amendment, a state could participate in the State Student Incentive Grant program (SSIG), even though participation of nonprofit institutions of higher education in this program, previously mandated effective October 1, 1978, is prohibited by the state's constitution. On Feburary 22, 1978, the Subcommittee on Education, Arts and Humanities of the Senate Human Resources Committee reported S. 2539 to the full committee. The Committee on Human Resources reported the bill, the College Opportunity Act of 1978, to the Senate, with amendments, on February 24, 1978.[11]

H.R. 11274. This bill, introduced by Representative William Ford (D-Mich.), chairman of the Postsecondary Education Subcommittee, and eleven cosponsors, was reported by the House Committee on Education and Labor on March 14, 1978, by a vote of 32–3. Three dissenters preferred tuition tax credits. Seventeen members submitted additional views to the committee report contending that increased student aid through existing programs and tuition tax credits are not mutually exclusive and expressing the hope that the two approaches would be merged. One member proposed a combination of the administration's proposal (H. R. 10854 introduced by Representative Ford and twenty-four cosponsors) and tax exemption for moneys paid into trust funds for educational purposes.[12]

H.R. 11274 as reported adopts the same 10.5 percent standard used in S. 2539 to determine how much parental discretionary income should be contributed to a young person's college education as a basis for determining student eligibility for BEOG funds. A 12 percent alternative assessment rate is provided, however, and the bill mandates that appropriations be used to fund BEOG grants on the basis of the 12 percent rate before payment of other types of assistance. The House committee estimates that approximately $1 billion would be required to fund grants at the 12 percent rate, and that this amount would aid about 1.25 million students. If additional funds are appropriated, the 10.5 percent rate would be utilized. The interest subsidy for the student loan program would be made available to all students, regardless of need, as is true in S. 2539. The committee bill would allocate $70 million to CWSP for fiscal 1979, rather than the $150 million proposed by the administration and the $100 million provided for in S. 2539. The bill would add $60 million more for CWSP for fiscal 1980. An increase of $70 million would be provided in the SEOG program, for which the administration requested no increase, and for which S. 2539 would provide an additional first-year increase of $100,000 over the amount requested in the budget. An additional $10 million would be allocated to the SSIG program, under which states match federal dollars for student grants.

Miscellaneous amendments would require that, in calculating a student's need for assistance under CWSP and the National Direct Student Loan program (as distinguished from the Guaranteed Student Loan program), the educational expenses of other children in the family, in the form of tuition payments to private elementary and secondary schools, must be considered.[13]

Elementary and Secondary Level Programs. Although the administration does not have an alternative to tuition tax credits that would give direct relief to *families* of elementary and secondary school pupils, it does propose allocating more money to elementary and secondary schools. As announced by President Carter on February 28, 1978, and by Secretary Califano in his testimony, additional aid is proposed to help schools with special programs to improve basic skills, aid the disadvantaged, assist in desegregation, and strengthen bilingual education. The administration also proposes improving the flow of federal funds to private schools. Of the $6.9 billion the administration has budgeted for elementary and secondary education in fiscal 1979, it estimates that $100 to $250 million would be channeled to private schools. With the changes proposed, the administration estimates that aid to private schools could double in fiscal 1980.

This administration proposal was introduced as H.R. 11282 by Representative Carl D. Perkins (D-Ky.) and S. 2675 by Senator Pell. Portions of this proposal were modified and incorporated in H.R. 15, the major elementary and secondary education bill in the House, as approved by the Elementary, Secondary and Vocational Education Subcommittee on March 21, 1978. As this analysis is written, H.R. 15 is pending before the full House Committee on Education and Labor and S. 2675 is pending before the Senate Human Resources Subcommittee on Education, Arts and the Humanities. (The other major administration education proposals are to establish a cabinet-level Department of Education and to increase the federal education budget by 46 percent or $4 billion over a two-year period.)

ARGUMENTS

Need

The three bills reported in the Congress target tax relief for claimed financial needs in different ways. All provide a measure of relief for educational costs of low- and middle-income families. Both S. 2539 and H.R. 11274 would assist students with costs for undergraduate work at colleges and vocational schools, though in somewhat different ways. The tuition tax credit bill reported by the Senate Finance Committee would initially address the needs of full-time students pursuing undergraduate work at colleges and postsecondary vocational schools. At phased intervals, however, relief would also be extended for tuition and fees paid at elementary and secondary schools, for graduate work, and for part-time students. This Senate bill would treat any privately operated school as an eligible educational institution if properly accredited under state law (or, if the state does not accredit elementary and secondary schools, if attendance at the school meets the state's compulsory attendance requirements) and if eligible for tax-exempt status under federal law. The claimed needs addressed by S. 2539 and H.R. 11274 and by the tuition tax credit bill raise additional issues that require discussion.

Cost of Undergraduate Education at Colleges and Vocational Schools. Proponents of all three bills rely on the spiraling costs of education at colleges and vocational schools to justify legislative action. Senator Robert Packwood (R-Ore.) cites reports of the College Entrance Examination Board that state that between the 1970–1971 school year and the 1976–1977 school year the average tuition and fees for four-year colleges rose 54 percent at private institutions and 57 percent at public institutions. The increase at private two-year institutions was 52 percent, and at public two-year institutions the increase was 130 percent.[14] Supporters of the pending bills also rely on data such as those found in Table 2, which show increased student costs and cumulative percentage increases between 1967 and 1976 in public and private colleges. Senator Patrick Moynihan (D-N.Y.) contends that, as our society becomes increasingly complex, education becomes a vital necessity in the marketplace. One estimate places the difference between the value of a high school diploma and a college degree at approximately $280,000. Moynihan argues that an individual becomes more productive when new skills and knowledge are acquired, and that society benefits from the improved skills and abilities of its members.[15]

The Center for the Study of Higher Education at Pennsylvania State University found that college tuition is a major factor in enrollment decisions.[16] Proponents of the pending bills contend that enrollments of college students from middle-income families in fact were down by 13.5 percent between 1967 and 1975. Both increased costs and reduced ability

Table 2
Student Costs (Tuition Fees, Room, and Board) for Public and Private Colleges and Cumulative Percentage Increases, 1967 to 1976

Year[a]	Student Costs (dollars)		Cumulative Percentage Change since 1967	
	Public	Private	Public	Private
1967	1,063	2,205		
1968	1,117	2,321	5.1	5.3
1969	1,024	2,531	13.3	14.9
1970	1,288	2,739	27.2	24.2
1971	1,357	2,917	27.5	32.3
1972	1,458	3,038	37.2	37.8
1973	1,517	3,164	42.7	43.5
1974	1,617	3,386	52.1	53.6
1975	1,748	3,667	64.4	66.3
1976[b]	1,854	3,896	74.2	76.7

Source: U.S. Office of Education, National Center for Education Statistics, *Projections of Education Statistics*, Table 41, p. 86, based on Congressional Budget Office, *Federal Aid to Postsecondary Students: Tax Allowances and Alternative Subsidies* (Washington, D.C., January 1978), p. 12.

[a] Year 1967 represents academic year 1967–1968, and so forth.

[b] Costs for 1976 are estimates of the National Center for Education Statistics.

to pay are considered responsible for this decline. Statistical analyses estimate that over 80 percent of the decline in middle-income enrollment rates is associated with factors related to increased college costs.[17]

E. G. West, professor of economics at Carleton University, Ottawa, testified before the Senate Subcommittee on Taxation of the Committee on Finance that the absence of a tax credit for higher education will result in further declining enrollment because of expected increases in cost:

> This, in turn, will mean a lower investment in professional skills, or what economists call "human capital." To the extent that other forms of human capital formation, such as on-the-job training, are imperfect substitutes for formal higher education, there will be just as much a break in economic growth as there would be if there were a check on *physical* capital expansion. Less growth means less income generated, and the latter implies less revenue for the Treasury.[18]

On the other hand, Census Bureau figures challenge the claim that young people from middle-income families are being financially squeezed out of college. A study of college and university enrollment for middle-income students shows that, although between 1967 and 1974 the percentage of college students from families with incomes of $10,000 to $15,000 in 1967 dollars dropped from 51.9 percent to 41.4 percent, this trend reversed during 1975 and the percentage rose to 47.5 in 1976. (A $15,000 income in 1967 is said to be the equivalent of $25,575 in 1976 because of inflation.) Despite the government's policy of giving the most assistance to the neediest students, the proportion of college

students from low-income families rose only slightly during the last decade—from 20 to 22.4 percent.[19] Florence Flast, chairman of the New York Committee for Public Education and Religious Liberty, argued:

> While Senator Packwood quotes the College Entrance Examination Board reports that between 1970–1971 and 1976–1977 the average tuition and fees rose 54 percent at private four-year institutions and 57 percent at public four-year institutions, Senator Kennedy has pointed out that since 1972 student aid programs in the Office of Education have increased 340 percent (an increase of from $1.0 billion to $3.4 billion), with direct grant programs being targeted more toward middle-income families.[20]

Thus some contend that financial needs of college students are being adequately met. Acting Assistant Secretary of the Treasury Donald C. Lubick claimed that increases in the cost of higher education are not as great as the proponents of tax credits might believe. He believes that expenses for education today do not take a larger share of family income than in the past.

> During the period 1967–1976 median family income has risen at a rate comparable to the rate of increase in gross student charges at institutions of higher education. . . . Per capita disposable personal income—or, average after-tax income of individuals—has risen even faster than gross student charges. Moreover, the rate of growth in student charges has recently declined. . . . During the past nine years, the charges faced by students from low and moderate income families, net of Federal assistance, have dropped as a percentage of family income; while, for middle income families, the ratio of charges net of Federal assistance to family income has remained about the same.
>
> Increased investment should be responsive to the greatest needs of our educational system, and not to an illusory need that focuses solely on price increases and does not take into account corresponding increases in income.[21]

In rebuttal to the median family income argument, Larry L. Leslie, professor of higher education of the University of Arizona, has stated that he believes that increases in overall median income have been caused by increases in incomes of the relatively poor and perhaps of the relatively rich. His belief that median income figures say little about the income of those in the middle class and their ability to pay for college is based on what he considers to be more appropriate data from the Bureau of Labor Statistics.

> Using the "Intermediate Budget for a Family of Four," it is seen that from 1970–75, middle-family costs increased by 43.6 percent while the (disposable) U.S. median income rose by 38.5 percent. In other words, the family in the middle had less discretionary income in 1975 than it had in 1970 to pay college tuitions that were over 50 percent higher.[22]

Dr. Leslie identified a second factor which is working against middle-income students:

> American Council on Education data show that middle-income parents are not supporting their children as federal needs analyses say they should. The

short-fall in parental contributions means that middle-income youth must, on their own, find about one-third more of the costs of college than most low- and upper-income youth. Specifically, the "net cost" of college left to the student to account for through his or her own means is 32.2, 41.6 and 29.6 percent for low-, middle- and high-income youth, respectively.[23]

Student Need at Private Institutions. The chancellor and president of Syracuse University, Melvin A. Eggers, testified before the Senate Subcommittee on Taxation concerning the ability of middle-income families to afford education at nonpublic institutions. He stated:

> They pay for programs which enable others to attend college, even though they receive almost no relief from the burdens they experience in covering the cost of education for members of their own families. On our own campus, we find that students from lower income families are over-represented relative to their share of population. Students from middle-income families are clearly under-represented. It has been said, and with some good evidence, that to attend an independent university one must come from a very poor family or a very rich one.[24]

Nonpublic elementary and secondary schools are also suffering dramatic declines in enrollment said to be due to increased tuition costs. The National Center for Education Statistics estimates that 4.2 million students will attend nonpublic elementary and secondary schools in 1984. This represents a drop of 2.1 million students since 1965. Without government assistance to students at these schools, it is said, this trend will continue steadily downward.[25] It is claimed that enrollments of middle-income students at nonpublic institutions of higher education are declining more than the 13.5 percent decline for such students at all institutions between 1967 and 1975.

William B. Ball, a trial lawyer, testified before the House Ways and Means Committee as to his own belief that the public interest more strongly supports the granting of tax credits for elementary and secondary pupils than for postsecondary students. He stated:

> Parents are compelled by law to have elementary schooling for their children, and in many states two or more years of high schooling is compulsory. But great numbers of parents, due solely to compulsions of mind or of religious conscience, must provide nonpublic education for their children. While college costs are higher than grade or high school costs, parents of school children are often economically weaker—because they are younger—than college student parents. Further, younger children can do little to earn money, while many older students are able to contribute substantially to the cost of their college education.[26]

U.S. Commissioner of Education Ernest L. Boyer said of the role of nonpublic schools in a recent speech:

> Private education is absolutely crucial to the vitality of this Nation, and public policy should strengthen rather than diminish these essential institutions. After all, private education is rooted deep in this Nation's heritage. The first schools

> and colleges in this country were, in large part, private institutions. Distinguished leaders in all walks of life have studied at nonpublic schools. And many of America's independent institutions have contributed brilliantly and enduringly to this Nation's heritage.[27]

Supporters of tax credits feel that, unless some financial relief can be provided to parents who send their children to private schools, public elementary and secondary schools subsidized completely with government funds and public colleges subsidized largely with government funds will be able to attract the most students. Freedom of choice in education will lose its meaning because few parents will be able to afford to pay for schooling at nonpublic institutions. Many believe the constitutional right of free choice between nonpublic and public schools established by the Supreme Court in *Pierce* v. *Society of Sisters*[28] has been seriously eroded by increasing educational costs and higher levels of income taxation. Thus, freedom of choice in education is becoming increasingly a privilege available only to the wealthy. (The arguments of opponents of financial relief are discussed in the section of "Effect on Social Goals.")

Opponents of tax credits believe that, if tuition tax credits are provided, schools will automatically increase their tuition charges by the maximum amount of the credit, and the savings intended for parents will be automatically "passed through" to the schools. Thus, the claimed need for relief would remain unmet. They argue that nothing in the pending tuition tax credit bill would prohibit this type of increase in tuition fees. A Congressional Budget Office (CBO) study in March 1977 stated "it is clear that tuition charges are more likely to increase in response to a broad across-the-board subsidy . . . than they are when a subsidy is targeted to a more narrowly defined group of students."[29]

Supporters of tuition tax credits argue that private schools must justify tuition increases to their students or to their parents. They must also justify them to their boards of trustees or other governing bodies, which have traditionally been reluctant to institute tuition increases except as a last resort. To the extent that tuition tax credits will result in a tax benefit, it will determine whether less affluent parents can send their children to private schools. Raising tuition rates would defeat the effort to attract new students, and historically, private schools have made substantial efforts to increase their accessibility to children of lower- and middle-income families.[30]

The American Council on Education responds to the argument that tax credits will lead to higher tuition charges:

> This argument ignores two facts: (a) that colleges and universities are extremely reluctant to increase tuition under any circumstances, and (b) that tuitions are certain to increase in the coming years, regardless of the passage of any tuition tax credit relief . . . but institutions of higher education do not act as profit-making businesses, raising prices in order to maximize their gains as market conditions permit. Rather, the business of higher education is to provide the best education for the largest number at the lowest possible price.[31]

Some opponents see more dramatic results of the passage of tax credits. One testified: "What is to prevent any or every public educational institution in the nation—state,

municipal or county—from imposing a tuition fee of $500 per student from kindergarten through secondary schools?"[32]

Proponents of tax credits do not accept this argument. The tax credit recommended by the Senate Finance Committee would apply to only 50 percent of tuition and fees. If a public school were to impose a tuition fee of $500 per student (or if a nonpublic school were to increase its tuition by $500) to absorb the benefit of the tax credit, the parent could take a tax credit of only $250, leaving him with an out-of-pocket loss of $250. Many states expressly prohibit tuition in public schools, and the concept of a free elementary and secondary education is so popular, it is thought, that this policy is unlikely to change. Insofar as nonpublic colleges are concerned, it is claimed that studies show that for every $100 increase in tuition there is a 1 to 3 percent drop in enrollment.[33]

In rebuttal to claims of need for assistance to pupils at nonpublic elementary and secondary schools, testimony on behalf of the American Federation of Teachers (AFL-CIO) contended that all schools, not just nonpublic schools, have declining enrollments. Studies of Catholic education have been cited to indicate that high tuition charges are not the reason Catholic elementary and secondary schools are losing students. The argument concludes that tuition tax credits would not solve this problem.[34]

Cost Implications

The tuition tax credit bill reported by the Senate Finance Committee is estimated to have the following annual costs (fiscal year):

1978	$39 million
1979	$916 million
1980	$1,418 million
1981	$2,835 million
1982	$4,479 million
1983	$5,290 million[35]

The administration's proposal, as outlined in the section above on "Action in the 95th Congress," would increase spending by $1,462 million. The distribution would be:

BEOG	$1,000 million
CWSP	$165 million
GSL	$297 million
Total	$1,462 million

According to the Congressional Budget Office cost estimate, S. 2539 would increase current spending levels by a total of $1,732 million. The distribution would be:

BEOG	$1,381 million	
SEOG	$50 million	
Guaranteed student loans	$33 million	($249 million in 1983)
SEOG and CWSP if the levels implied in the bill are met	$268 million	
Total	$1,732 million[36]	

According to the CBO cost estimate, H.R. 11274 would increase current spending levels by a total of $1,654 million. The distribution would be:

BEOG	$1,512 million
Guaranteed student loans	$48 million ($268 million in 1983)
SEOG and CWSP if BEOG is funded at level implied in bill	$94 million
Total	$1,654 million[37]

The Senate Finance Committee places the cost of tuition tax credits for pupils in elementary and secondary schools at 25 percent of the total after all features of the tax credit program are effective.[38] None of the alternative programs for grants and loans allocates any money for pupils at elementary and secondary schools, though the administration has promised to try to reach parity between the services and supplies, such as textbooks, purchased for pupils at public and nonpublic schools. In evaluating the cost arguments, it should be kept in mind that, while three-fourths of the cost of tuition tax credits will go to college and vocational students, the strongest opposition to tuition tax credits is reserved for credits for families with children in nonpublic elementary and secondary schools.

Many opponents believe that if tuition tax credits are instituted, there would be later attempts to increase the size of the tax credit. If the maximum tax credit were allowed to increase substantially, the costs of this program could dwarf other federal education spending. Even without such increases, it is argued that the cost of tuition tax credits would amount to nearly 50 percent of the current federal education budget, and that this fact may affect the availability of funds for existing programs, including services at elementary and secondary schools.[39] One administration witness stated that if tuition tax credits were adopted, the number of pupils who attend nonpublic elementary and secondary schools could be expected to increase, and thus the cost to federal taxpayers would be even more than has been estimated.[40]

Some opponents argue that the government simply does not have the money to spend, and that there is a need to curb inflation and balance the budget. The need to balance the budget and to "get our fiscal house in order" does not permit us to forego $5.29 billion in revenues or to increase grant and loan programs substantially.

Proponents of the administration's approach contend that the grant and loan programs advocated would cost less than tax credits because they would target limited resources to those who are most in need. Senator Packwood, on the other hand, argues that tax credits can be tailored to do anything that grants and loans can do, and that in dollar-for-dollar aid to students, tax credits are more efficient. (See the discussion in the next section on administrative costs.)

Supporters of tax credits argue nonetheless that the cost of tax credits is reasonable. When compared with a current annual federal budget of over $500 billion, the tuition tax credit, when fully implemented, would amount to approximately 1 percent of the federal

budget. According to the National Center for Education Statistics, overall annual expenditures for public education for 1976–1977 amounted to $97 billion. This consisted of $38 billion from local revenues, $45 billion from state sources, and $13 billion from federal sources. By fiscal 1979 this expenditure is expected to approach $110 billion annually. Tuition tax credits would amount to only a relatively small percentage of this total.[41]

Proponents argue that if pupils leave public schools for nonpublic elementary and secondary schools, as opponents of tax credits predict, public expenditures for such education would be lower and, conversely, if nonpublic elementary and secondary pupils are forced into public schools, costs to taxpayers would greatly increase. Testimony on behalf of the Federation of Catholic Teachers stated that without New York parochial schools several hundred thousand students would be in public schools, and the taxpayers in New York would have to pay almost twice as much as at present to the public school system to educate these pupils. In the New York City area, the cost per pupil of educating a child in a Catholic elementary school is $500 per year, as compared with public costs per pupil of over $2,200.[42]

Opponents of tax credits argue that even if the current grant and loan program were to force the closing of nonpublic elementary and secondary schools, the large increases in public school costs predicted by proponents of tax credits would not materialize because the 9 percent of the total school population now in private schools could easily be absorbed in the more than 16,000 public school districts, many of which have declining enrollments. Proponents of tax credits counter that if nonpublic schools were closed and public education became a public monopoly, we could expect further increases in its cost, whereas competition from private schools forces public school costs down.[43] The opponents of tax credits claim that no such "yardstick effect" from private school competition has been discerned.

Some people who object to the high cost of the current proposals believe that middle-income families have a simple liquidity problem during the relatively short period of time that their children are in school. Some believe that the best way for the federal government to provide assistance to middle-income parents is to provide for tax deferrals rather than to provide tax credits or deductions. Representative Abner J. Mikva (D-Ill.) and others have introduced bills, such as H.R. 3268, which would allow parents to postpone all or a portion of their income tax liability while their children are in college. Representative Mikva described his program as follows:

> I proposed an alternative to the straight tax credit which would permit the student or the parents of the student to *defer* from taxes up to $1500 per year of eligible educational expenses, and to repay in full the deferred amount at a 3 percent interest rate beginning after completion of the educational program. The repayment provision protects the federal revenues in the long run, and allows for a larger annual deferred credit than can be provided under the straight credit. While the initial revenue loss under the tax deferment concept is almost $8 billion, as repayment begins, the annual costs decline until the repayments to the Treasury balance the annual amounts deferred. In the long

run, therefore, more relief can be provided individuals with no revenue loss to the Treasury.[44]

In effect, this proposal would create a loan program administered through the tax system.

Opponents of this concept argue that parents who wish to send their children to nonpublic elementary and secondary schools are already paying for their children's education over a long period. They would incur twelve years' worth of educational costs even before the four or more years of college and graduate work. These parents, it is argued, do not want loans which they must repay at a later time, often during their early retirement years, when their income drops off substantially. They would prefer to be able to pay for their children's education out of their current income by taking advantage of a tax credit, rather than deferring their payments, with the added burden of interest.

Another proposal which is thought by some to be both helpful to those who wish to attend college and less expensive to the government is that advanced by John R. Silber, president of Boston University. He proposes a federal trust fund to loan tuition fees to students, who would then repay the money by means of payments withheld from their future wages. While $4.5 billion would be needed to fund the project initially, it is argued that the trust fund would be self-sustaining within one generation. Representative James M. Jeffords (R-Vt.) has proposed the concept of an individual trust fund rather than direct federal aid for many families. He argues that this concept would incorporate all the advantages of the tax credit, would be simple to administer, would create no new agencies, and would provide more realistic amounts of money than a $250 or $500 tax credit. In addition, this approach would build up capital in the private sector and encourage self-sufficiency.[45]

Opponents of an expanded guaranteed student loan program, a major feature of the administration's program and of S. 2539 and H.R. 11274, question its cost effectiveness. The report of the Senate Committee on Human Resources notes that the program has been plagued with problems since its inception, and the default rate has been estimated to be as high as 20 percent.[46]

H.R. 11274 attempts to make the guaranteed loan program more attractive to lenders by raising the special allowance to lending institutions by 0.5 percent during the repayment period and by providing a minimum special allowance floor to lenders of 1 percent per year, regardless of market conditions. Those who question the expanded use of the student loan program feel that the government is merely postponing payment of the real costs of student assistance because it remains contingently liable and must "make good" on defaulted loans. Committee reports do not discuss the probable extent of the government's ultimate liability to lending institutions that participate in the guaranteed student loan program.

The Congressional Budget Office assumes that 2.9 million newly eligible students would obtain loans averaging $1,600 each and that an increasing number of students would seek and obtain loans in future years. With 2.9 million loans at $1,600 there would be a contingent liability of $4.64 billion for only one year's total of loans. Critics claim that

HEW has been inept at administering the program and collecting from loan recipients, many of whom have found that they can be completely free from debt by taking bankruptcy. If a 20 percent default rate holds and collections are not made from the defaulting borrowers, the cost to the government of loans made in only one year could be $928 million.

Critics claim that regardless of whether the proper figure is close to $1 billion or half that, it should be factored into the cost of the administration's proposal. Proponents of the administration's approach point to remedial steps now being taken to improve the collection rate.[47] They contend that the fact that a borrower initially defaults does not mean that the loan will go uncollected.

Critics of the loan program contend that the collection rate on defaulted loans is so low that it cannot be expected to improve much in the future. E. G. West cites collections during a four-year period of $30.5 million, as against $381.2 million defaulted loans on which the government was required to make good, or a collection rate of only 8 percent.[48] Critics continue to argue that the debtor has only to avoid levy on his property or the garnishment of his wages for five years and then he can declare himself bankrupt, thus avoiding repayment completely. Even if the popular avenue of bankruptcy is not taken, the statute of limitations requires the government to sue within six years from the date of default. HEW's past record of delay causes critics to argue that a high percentage of student loans may have to be "written off," thus adding greatly to the cost of the administration's program.

Burden and Complexity

In recent years educators have expressed their concern that federal controls over education are becoming excessive. Along with grants to schools, and loans and grants to students, come regulations, paperwork, and a threat to academic freedom. The witness for the Commission on Independent Colleges and Universities in the State of New York testified before the House Committee on Ways and Means concerning the benefits of tuition tax credits in reducing governmental regulation of education:

> By far the best hope for lifting the yoke of government regulation from the academic field is that offered by the tax credit route. Dollars for higher education which come through appropriations inevitably bring with them a web of bureaucratic requirements. Dollars left with the users of higher education through tax credits would not only mean less regulation and intervention, they would impose a more rigorous mechanism of accountability—accountability to consumers in an increasingly competitive higher education environment.[49]

Senator Jesse Helms (R-N.C.) has stated that a major cause of the increase in the cost of education at the college level is the federal government. By way of illustration he cited a survey showing that at Duke University the cost of implementing federally mandated social programs had increased from $58 per year per student in 1968 to $451 in 1975.[50]

Supporters of tuition tax credits believe that they are the most effective and least complicated way to provide students and parents with financial relief from ever-increasing education costs. They argue that tax credits will not stimulate further expansion of the federal bureaucracy, unlike federal student grant and loan programs. Indeed a recent governmental report showed the multitude of insurmountable problems facing educational administrators of grant and aid programs and indicated that increasing federal student aid programs would bring burdensome and costly administrative requirements.

> Moreover, as the volume of student aid has increased, a substantial administrative structure has been created at every level. The Study Group believes it is time to rethink the extent to which, and how, financial aid should be provided and to rethink the respective responsibilities of the Federal Government, State governments, educational institutions, and students and their parents for sharing the costs of education and training. Furthermore, increasing efforts must be directed toward analyzing the impact of the student aid on institutional decision-making.[51]

Senator Packwood has cited the extreme complexity of the HEW student aid application, thus calling attention to the burdens of current aid programs imposed on the participants as well as on colleges and HEW Office of Education officials.

Melvin A. Eggers, testifying in support of the Packwood-Moynihan tuition tax credit bill, described the current mechanisms by which the federal government has provided aid to higher education as:

> A complex set of student assistance programs, including basic grants, supplementary grants, state incentive grants, direct and guaranteed loans, and work-study programs—all based on need, for which the cut-off point is at a relatively low income level. These programs, designed to increase access, are overburdened even for the purpose for which they were designed. They have presented problems both for applicants and administrators. They have yielded a "crazy quilt" of application and eligibility procedures which is bewildering to potential applicants, and defies the ability of our bureaucracies to administer them, and have resulted in a labyrinth of disconnected, overlapping and uncoordinated parts that must be brought into better order.
>
> These programs can, no doubt, be improved but they will continue to be directed toward the goal of access for which they were designed. They are simply not suitable for the quite different purpose of easing the burden of the cost of higher education to middle income families. For that goal, there must be a new program, not simply an extension of a much-too-complicated set of programs designed for a different purpose.[52]

Congressional Budget Office estimates for increased grants and loans do not detail all of the administrative costs involved, even for the federal government. Nor do they give a basis on which administrative costs may be projected. The CBO estimates do predict that the increased number of BEOG applications will increase the government's administrative costs for that program by $24 million. The House bill increases by 0.5 percent the special

allowance made to lending institutions to ensure an equitable return, that is, to offset administrative costs in the private sector. Supporters of tuition tax credits state that their approach involves only a one-line entry on tax returns, and does not require detailed application forms or approvals of either educational institutions or HEW.

Proponents of the administration's approach argue that S. 2539 and H.R. 11274 are deliberately designed to minimize the administrative burden of the grant and loan programs. The Senate committee report states:

> S. 2539 builds upon the basic building blocks of student aid—basic educational opportunity grants, supplemental educational opportunity grants, college work-study, State student incentive grants, and guaranteed student loans—already familiar to schools and colleges across the country, as well as to millions of parents and students in post-secondary education.
>
> In framing S. 2539, the committee has attempted to make as few changes in the provisions of the programs as possible, to reduce confusion and to assure that the greatest number of eligible students benefit from the programs. Another major goal of the committee bill is the reduction of paperwork already accompanying federal aid programs, such as the needs test in the guaranteed loan program. A third is the avoidance of the creation of any new bureaucracy to monitor or administer any of the programs contained in the bill. By building on existing structures, the committee is confident that no new bureaucracies will grow up.[53]

Administration witnesses before the Senate Committee on Taxation challenge the claim that tuition tax credits would be easy to administer. Acting Assistant Secretary of the Treasury Lubick stated:

> I realize that the argument has been made that a tuition tax credit would be simple to administer. Yet adding an additional program on to an already large number of federal and state programs inevitably increases complexity of both the tax system and the educational system. . . .
>
> Moreover, the Internal Revenue Service is not staffed or equipped to monitor educational institutions to determine if their courses meet the necessary requirements for tax credits, nor should it be asked to check on students to see if they are meeting requirements such as full time attendance for a tax credit.[54]

Assistant Secretary Richard Warden of HEW testified:

> An education tax credit would present new difficulties for both the taxpayer and the Internal Revenue Service. A new mechanism would be needed in the tax structure to determine taxpayer eligibility, institutional eligibility, the proper amount of the credit, and the length of time a taxpayer may continue to claim the credit. All of these additional procedures run counter to efforts to simplify the tax system.[55]

Some opponents of tuition tax credits argue that they will not protect schools from the heavy hand of government regulation and that it is foolhardy to believe that federal controls will not follow federal dollars.

Supporters of tuition tax credits argue there is yet another advantage of tax credits. Once in place, they would not be subject to the annual appropriations process. Tuition tax credits are likely to remain undisturbed for a number of years. This predictability offers an important advantage to middle-income families who, knowing exactly how much tax credit would be available for each year in the future, could then make definite plans for their children's education. Financial aid based on student need has often not been predictable in the past.[56]

Effect on Social Goals

Much of the debate concerning the relative merits of tuition tax credits, as opposed to the administration's approach of more grants and loans, revolves around the effect of each on the attainment of certain social objectives. The two approaches would have different effects on who controls decision making, particularly with respect to primary and secondary schools, and on the means selected to reach stated objectives.

Diversity and Pluralism. Supporters of tuition tax credits argue that nonpublic schools represent an integral part of American society, reflecting the diversity of the country and providing its citizens with important opportunities to obtain the education they deem best suited to individual needs and family values. Diversity, pluralism, and variety are important values that should be cherished. At no time are they more important than in the experiences children have during their early years, when their beliefs and attitudes are formed, their minds awakened, and their friendships sealed.[57] As the data cited in the section below on "Effect on Nonpublic Schools" show, increasing costs of education and lack of relief from the burden of paying full taxes to support public schools has placed the parents of children in nonpublic schools in an overextended position. Without nonpublic schools, many of the important values associated with diversity, pluralism, and variety would be lost.

Opponents of tuition tax credits contend that the tuition tax credit is nothing more than a revival of the discredited voucher system used to avoid integrated public schools. Tax credits, it is claimed, would subsidize the right of association and promote racial and ethnic segregation. Giving a poor family a credit equal to 50 percent of tuition and fees would not guarantee the family a choice, particularly if it has several children. Poor parents may also be denied a choice of schools because of their geographical location. Parents with more resources would be encouraged to take their children out of the public school system, thus skimming off the better students.

Supporters of the tuition tax credit respond that nonpublic schools currently work successfully with ghetto children and often have a high percentage of minority pupils and a large number of children from very poor families. Indeed, S. 3946, the tuition tax credit bill, would not permit tax credits for attendance at schools which discriminate on the basis of race. Thomas Vitullo-Martin, an independent education policy analyst, believes that suburban public schools, not nonpublic schools, are the real elitist institutions in America today.

> Further, suburban public schools have been responsible for the racial isolation of minorities in the central cities. Private schools have given parents the option of better schools without the necessity of moving to the suburbs. The private schools have kept the cities more integrated than they would be without them. In our study, we found private schools to be better integrated racially than the public schools serving comparable income groups.[58]

Dr. Vitullo-Martin also testified:

> Private schools are disproportionately important to minority and lower-income students. . . . Inner-city private schools run almost entirely from revenues generated within the community. They spend one-quarter to one-third the amount per pupil spent by the public schools in the large cities we examined in a recent survey. . . . In the most successful inner-city private school in the country, Holy Angels on the South Side of Chicago, about $300 is spent per pupil during the twelve-month school year, and pupil-teacher ratios reach forty-two. But these schools have a reputation for performing. Typically their students read at or slightly below grade level, which is one to two years above median in the public schools by grade six. Holy Angels boasts that half of its eighth grade graduates eventually graduate from college. And more than half of Holy Angels 1300 students receive public assistance.

Opponents of tuition tax credits believe that current public elementary and secondary education is indeed pluralistic, and that there is no educational monopoly in America.

> Public schools are not monolithic institutions, but pluralistic in every sense, independently controlled by 16,000 local lay boards of education, democratically selected. Their governance, expenditures, students, size, facilities, curriculum, quality, and innovativeness are as varied as the communities they serve.[59]

One witness testified:

> The argument for diversity of choice in education is mythical: 90 percent of the elementary and secondary school children in this country, including almost two-thirds of all Catholic children, attend public schools. Of the remainder, 90 percent attend Catholic schools, 5 percent other sectarian schools, and 5 percent nonsectarian. The selective admissions and retention policies of nonpublic schools, by religion, academic achievement, national origin, behavior, and socio-economic status make them more elitist than pluralistic.[60]

Supporters of tax credits point to the racial and cultural diversity of private schools. Statistics cited by the National Association of Catholic School Teachers indicate that:

> Of the 18,421 students enrolled in the forty-seven inner-city Catholic grade schools in Manhattan last year, 14,369, or 78 percent, were from minority groups: Blacks, Hispanics, Orientals, American Indians, "others." In sixty-four of the seventy-seven inner-city parochial schools in Manhattan and the Bronx, the Archdiocese describes the school population as 50 percent or more "culturally deprived," meaning in almost all cases certifiably poor. In thirty-six of the sixty-four, the proportion goes above 85 percent.[61]

Control of Educational Policy. Opponents of tuition tax credits argue that the American public school system was established because nonpublic schools predominated in colonial days and only a privileged few could afford to obtain an adequate education. For the reasons stated in the section below on "Effect on Public Schools," opponents claim that tuition tax credits would destroy the public school system as we have known it, and a strong public school system is the centerpiece of a democratic society. While opponents assert that they do not object to private schools, they emphatically object to the use of tax revenues for elementary and secondary education in nonpublic schools.

It is said that tuition tax credits would lead to the fragmentation of educational policy. Public school administrators claim that control over education is crucial. They believe that students at public schools receive a richer, fuller, and broader education and living experience than students in nonpublic schools. Even though the number of educational alternatives would be fewer without tuition tax credits, the choices that remain would provide a better educational experience for American children.[62] A unified, free public school system is said to be helpful in avoiding splintered communities and intergroup hostility. Will B. Davis, president of the National School Boards Association, a federation of state public school board associations, argued:

> The overwhelming majority of public schools produce a good educational product. For example, in the area of staff, public school teachers are 1) certified, 2) at times recertified, 3) provided in-service training, and 4) paid at competitive salaries. These conditions are not guaranteed in private education. Putting aside those private schools which serve upper income levels, is the educational attainment of private school children vis-à-vis similar public school children such as to justify the federal encouragement of private education?[63]

Acting Assistant Secretary of the Treasury Lubick testified that "a tuition tax credit moves the administration of educational policy away from that agency of the federal government that is and should remain responsible for trying to bring some consistency and rationality to the existing program structure."[64] Mr. Lubick presumably was referring to the Department of Health, Education, and Welfare. The administration also opposes tax credits because another pair of congressional committees—Senate Finance and House Ways and Means—would then be concerned with education. (The Senate Human Resources Committee and the House Education and Labor Committee have jurisdiction over grant and loan programs in education.)

Supporters reject the argument that HEW should control all education expenses. The logical extension of this position would preclude the use of the tax system to accomplish any public policy goals, when in fact many public goals and social purposes are promoted by tax policy. Representative William Frenzel (R-Minn.) points out that the responsibility for formulating educational policy is already divided both in the executive branch and in the Congress. Different government agencies seek appropriations for and administer educational benefits. The GI bill, social security benefits for dependent students, health professions educational assistance programs, tax deductibility of educational expenses incurred for business purposes, charitable contributions, and Department of Defense

education programs are only a few of the programs that do not fall under an education committee's jurisdiction.[65]

Supporters of tuition tax credits do not agree that public elementary and secondary education is superior to their nonpublic counterparts. They claim that such an opinion reflects the same type of prejudice that led to a 1922 law in Oregon requiring that every child in the state attend a public school. The Supreme Court overturned that law because it unreasonably interfered with the liberty of parents to direct the upbringing and education of their children.[66]

Proponents of tuition tax credits contend that refusal to allow tax credits or other relief to families who wish to send their children to nonpublic schools amounts to the perpetuation of an educational monopoly. Many families cannot afford to pay property, sales, and income taxes to support public schools and also pay tuition at private schools. They contend that the public school system, like any monopoly, is unresponsive to the needs of children of primary and secondary school age. Public schools are graduating pupils who are unable to read, write, or cope with the basic requirements of life. Proponents of tuition tax credits regard the functionally illiterate high school graduate as a living example of the worst sort of wastefulness of tax moneys and of human potential.[67] It is pointed out that in the face of this record the educational establishment, in the form of a panel of experts from the National Academy of Education, has spoken out against the growing public demand for standards of student competence.

Proponents argue that with tax credits families can shop for schools which are more responsive to their educational needs. Freedom of choice will bring into play the discipline of the marketplace, and public schools would then become more accountable. Parents of many minority and inner-city children in particular cannot now afford to shop for better conditions. But if a sufficient number of parents were given a choice and were to exercise that choice, the public school administrators and boards would watch costs and improve quality. Bureaucratic attempts to centralize control of educational policy should not be allowed to thwart freedom of parental choice and the benefits that flow from price and quality competition in the marketplace.[68]

Senator S. I. Hayakawa (R-Calif.) testified in support of tuition tax credits generally and stressed his particular support for elementary and secondary education tax credits. He stated:

> Parents seem helpless to control their children's education. Teachers and administrators are often more interested in pleasing government bureaucrats who control the funds rather than parents who do not *directly* pay for their children's education. The structure of the system stands in the way of accountability to parents. There are instances where students receive their diplomas whether or not they can read or write, while their teachers and administrators receive their salaries and raises regardless of student performance.[69]

While opponents argue that tax credits will promote racial and ethnic segregation and leave inner-city schools with disadvantaged pupils, proponents contend that tuition tax credits are important to minorities and to the poor in their search for a quality education.

Victor Solomon, director of educational activities of the Congress of Racial Equality, testified that the tuition tax credit bill provides a chance to do something about the lack of quality education for minorities and the poor in the inner city. He described the way in which this bill would help.

> What will be the effects of the tax credit bill? First, it will directly help those students who will be enabled to go to better, non-public schools when the public system has failed them. The use of voucher or tax credit relief for parents of children who are doing poorly, say, over a year behind national norms in reading and math in the public schools, is justified on simple fairness grounds, but there is no reason why all parents should not have greater choice.
>
> Perhaps most importantly, there will be a competitive stimulus to the public schools to improve. We at CORE have not given up on the public schools; we recognize that whatever legislation is passed, the majority of American children will be educated in public schools. But the presence of even a fairly small number of alternatives, even just the potential of parents being able to reject a school that is not doing its job, can work great changes in the public schools. . . .[70]

A witness for the Federation of Catholic Teachers compared the results that parochial schools achieved with the results of public schools in the same city.

> We, too, teach children to read and write—oftentimes better than public schools. Test score results from Science Research Associates (SRA) indicate that New York Archdiocesean elementary school students consistently score a half year or more better than the national average. According to New York City Public School Chancellor Irving Anker, the City's public school student, however, scores only 40 percent on grade level with 60 percent falling further behind. At one school in the south Bronx where Catholic school students are one year behind the SRA norms, the nearby public school's norms for students drawn from the same population are three years behind.[71]

Thomas Sowell of the University of California, Los Angeles, argues that the administration is wrong to emphasize assistance to college students while ignoring the needs of elementary and secondary school pupils. The administration's bill does nothing for the minority or inner-city youngster who drops out of school because of the school's poor performance, and thus never reaches college where he can take advantage of a federal grant or loan.

Opponents of tuition tax credits respond that they do not oppose freedom of choice, provided that nonpublic schools are not supported out of public revenues. They equate tuition tax credits for students who attend parochial schools with public support of nonpublic schools. Some opponents ask why public schools should not have a monopoly on public funds. As the centerpiece of our democracy, public schools deserve the support of the tax dollar.

In any event, public schools are not monolithic institutions. Each school is different, with its own management and most are accountable to parents through a democratically elected school board. While they are not perfect, their successes have been much greater than their failures. Parents who are not fully satisfied should work within the system, join

the PTA, and achieve changes in existing public institutions. Public schools are too precious a part of our social system to permit the use of tax revenues in a way that would weaken them.

Proponents of tuition tax credits respond that if public schools are doing a good job, they have nothing to fear from competition. But unlike a private business, if a public school does not perform adequately it does not go out of business. Only parental freedom of choice and the self-regulation of a competitive marketplace will stimulate their improvement.

Targeting and Redistribution. Proponents of the administration's program of more grant and loan assistance to students argue that it would be targeted to those most in need, whereas wealthy families would take advantage of the tax credit. Secretary Califano is quoted as saying that we cannot afford poverty programs for people who are not poor.

> Furthermore, many middle income families will invest the same amount of money in higher education regardless of the credit. The credit will affect neither the decision to send a family member to college or the choice of a college to which that person is sent. With respect to these families, the tax credit thus becomes merely a form of general tax relief.
>
> General tax relief should not be extended only to those families with children in college. In this regard, the President has asked the Congress to enact a general tax relief measure that would assist tax-paying families on a more equitable basis.[72]

Critics of tax credits argue that there is no guarantee that the tax credit will be spent on education by the parent or student who receives the credit. Federal grants, on the other hand, are paid to the student at the beginning of each semester. In some programs the federal grant is credited directly to the student's school account, and it is fairly well guaranteed that the funds are spent on their intended purposes. Tax credits, on the other hand, would be received when the parents filed their tax returns, between January and April of each year, six to seven months after college expenses have been paid. Since the money goes not directly to the student but to the parent, there is a possibility that this credit would not be as effective in alleviating the financial burden on students as a grant or a loan program.[73]

Supporters of the administration's approach who criticize tax credits argue that the families most likely to benefit from tuition tax credits for elementary and secondary education are those who already send their children to nonpublic schools. They contend that these families are better able to afford private education.

> According to the 1977 report of the National Center for Education Statistics, 57 percent of elementary public school parents earn less than $7,500 per year (in 1967 dollars) while only 34 percent of nonpublic parents fall in that category. While 45 percent of nonpublic elementary parents earn over $10,000 per year (in 1967 dollars), only 25 percent of public school parents are in that category. On the secondary level, public school parents have a median income of

> $12,300, while nonpublic school parents have a median income of $15,962, which is 30 percent higher. S. 2142, thus, would exclusively benefit nonpublic school parents, who tend to be more affluent, and provide no benefits whatever for generally less affluent public school parents.[74]

Supporters of tax credits believe that once tax credits have been adopted, additional numbers of relatively less affluent parents will be able to afford to send their children to nonpublic schools, thereby changing significantly the demographics of the student bodies of private schools. This bill would provide the means for less affluent parents to exercise greater freedom of choice than at present. Senator Packwood argues that, if Congress desires, tuition tax credits can be targeted to families below a certain income level quite as readily as this can be done with grants.

It is true that the tuition tax credit bill would provide for dollar payments to families in the amount by which the credit claimed exceeds the taxes they owe, the so-called negative income tax credit. To this extent, the bill provides for redistribution of income. Sponsors of the legislation contend that their primary intention is not the redistribution of income, however, but rather the promotion of education.[75]

Larry L. Leslie observed:

> Tax credits are consistent with historic approaches to providing incentives rather than income transfers to those who invest in the future. Investment in human capital (higher education) is analogous to investment in physical capital and is not consistent with the aims of social welfare programs. Persons who invest in their own higher education are investing in their future and in that of the entire nation; to turn such efforts into government income transfer programs, such as student aid, would undermine the very nature of an investment philosophy. Additionally, the precedent of extending such transfer programs to the middle class could have serious future implications for other government transfer programs.[76]

Representative Albert H. Quie (R-Minn.) testified:

> As for the argument that some very small percentage of the benefit might go to upper income people, my response would be that the inclusion of these people did not prevent the establishment of the social security system—why should it hold up the enactment of aid to several million families. Similarly, I don't believe that the advocates of national health insurance plan to exclude coverage for people above a given income level.[77]

Table 3 sets forth the distribution of tax benefits under the Packwood-Moynihan tuition tax credit bill. Supporters note that 58 percent of the benefits would accrue to families with incomes under $28,000, well within the range targeted by the administration's bill, which provides grants for families with incomes as high as $25,000. Moreover, figures compiled by the Treasury Department show that while households earning more than $30,000 a year represent 5 percent of all households, these households pay 39 percent of all taxes.

Table 3
Distribution of Tax Benefits under the Packwood-Moynihan Bill

Adjusted Gross Income	Tax Liability Decrease (millions of dollars)	Percentage	Cumulative Percentage
Less than $5,000	323	7.4	7.4
$ 5– 10,000	484	11.1	18.5
$10– 15,000	849	19.5	38.0
$15– 20,000	879	20.2	58.2
$20– 30,000	1,182	27.1	85.3
$30– 50,000	486	11.2	96.5
$50–100,000	123	2.8	99.3
More than $100,000	22	.5	99.8
Total	4,348[a]		

Source: Representative William Frenzel, testimony before the Ways and Means Committee of the House of Representatives, February 14, 1978 (mimeo), p. 4.

[a]For 1978; same breakdown for 1980.

To compensate for inflation and higher social security taxes, Congress has skewed tax relief in recent years to favor lower-income families. The result has been a significant tax squeeze on the so-called middle and upper-middle income family with an income between $20,000 and $35,000 per year.[78] Recently approved increases in social security taxes add to the tax burdens of these families. It is the middle-income family which the President proposes to assist. Tuition tax credit supporters claim that data in Table 3 show that tuition tax credits would provide relief to low- and middle-income families in the range that especially needs assistance. This table indicates that 85.3 percent of all benefits would go to families with adjusted gross incomes of under $30,000 per year. Those with incomes of up to $50,000 would receive 96.5 percent of all benefits.

Proponents of the administration's approach to relief continue to insist that their bills target relief for the families with the greatest need and that the emphasis on loans strengthens the idea that higher education is indeed an investment. Supporters of tuition tax credit stress the high administrative costs of the administration's program and argue that tax credits involve completion of only one line on the tax return.

Other. Proponents of tuition tax credits argue that the administration's alternative of increased federal funding for postsecondary grant and loan programs does not take into account one fact: Most Americans would prefer to pay for their children's education with their own earnings, through a tax cut, than with a government handout. Supporters of tax credits believe most Americans, particularly middle-income Americans, resent disclosing their personal finances to obtain a grant or loan. Tax credits would allow families to maintain the privacy of their finances and would give them the sense that they are providing for their children with their own money, rather than having the government provide for their children with someone else's money.

The president of the University of Michigan's student body, testifying in support of tax credits, reiterated this reluctance of middle-income families to request federal assistance.

> At present, the nature and complexity of financial aid applications actually prevents some students from receiving aid. Many parents feel, for example, that their completion of the Parent Financial Statement . . . is an invasion of their privacy. This sentiment, which is not confined to any income bracket, and the resulting refusal of the parent to complete the statement, automatically disqualifies the student from the benefits of this grant program.[79]

A member of the administration of the University of Delaware questioned the extent to which middle-income families would participate in financial aid programs.

> I have encountered no small number of students at our university who were forced to leave school because of financial difficulty and who, upon investigation, were found to be eligible for financial aid under the existing programs. When these students were asked why they did not apply for aid for which they would have been eligible, they responded that financial aid was perceived as a kind of welfare program, a program that carried a stigma of public assistance. If such attitudes prevail among students from low-income families, then I believe that these same attitudes would be found to an even greater extent among those in the middle-income range. Tax credit, on the other hand, carries no such stigma.[80]

Tax credit supporters believe that the identity of the source of funds for aid to students is important, both practically and symbolically. The tax credit would not be a handout, and the stigma of welfare would be eliminated. Dr. Leslie believes that "the precedent of extending [income] transfer programs to the middle class could have serious future implications for other government transfer programs."[81]

Some proponents of the administration's approach believe that middle-income parents do not want tax credits but would prefer low-interest loans. They believe that middle-income parents would be better able to use a loan for a large portion of their child's education, rather than a tax credit for a small portion. Assistant Secretary of HEW Richard Warden testified that an increasing number of middle-income families have already benefited from rapidly expanding federal student aid programs:

> For example, from 1967–1976, total loan funds available under the Guaranteed Student Loan Program—the major source of assistance for middle-income families—rose by 433 percent. Also, in the Education Amendments of 1976, the Congress provided for greater access to the Guaranteed Student Loan Program for middle-income students by raising to $25,000 the adjusted family income level at which students are automatically eligible for the federal interest subsidy while at school.[82]

The administration's proposal has been modified to eliminate any income ceiling in the pending bills that authorize extension of the interest subsidy on federally guaranteed student loans. Proponents of that approach point out that all "needs tests" are eliminated, so that privacy should not be a concern of potential borrowers. The loan approach is more fiscally responsible for a nation with limited financial resources for education.

On the other hand, some tuition tax credit supporters are concerned that student loans have taught a generation of students to borrow more than they can readily repay, and they have also learned an unfortunate lesson—it is easy to avoid payment of honest debts by dodging collection efforts or declaring bankruptcy. No such concerns are involved in tuition tax credits. In addition, tuition tax credit advocates stress that the administration's program does nothing for those families which have not yet reached their earning potential and need help in sending their children to better elementary and secondary schools.

Effect on Public Schools

Secretary of Health, Education, and Welfare Joseph Califano has said that tuition tax credits would deal a devastating blow to public school education in this country and would skew federal benefits toward parochial schools. The *Washington Post* argues that a tax subsidy system would encourage parents to take their children out of public schools and thus would diminish the strength of public schools. The subsidy is said to be large enough to stimulate the rapid growth of every kind of private school.[83] Secretary Califano argues that, insofar as elementary and secondary school pupils are concerned, the tax credit would result in greater per capita federal funding for private than for public education. He said that the current average federal expenditure per private school student is approximately $60, compared with $128 per pupil in public schools. If a $500 tax credit were adopted, the private school student figure would be $560, almost four times the public school student figure. Another administration witness testified:

> We feel that the tuition tax credit proposal would have a discriminatory impact vis-à-vis public school parents and private school parents, in that it would be a distinct advantage to private school parents and might well trigger a stampede from the public schools to private schools. We feel that this could possibly have a corrosive effect on the public schools and could result in the public schools being populated almost entirely by the poor and racial minorities.[84]

Still another witness testified: "The effect in the long run of tax credit legislation could be to force children out of the public schools because of declining quality."[85]

This witness also stated:

> Taxpayer support for tuition payments to non-public schools would likely result in a weakening of the political and financial support for the public schools at the local level. Public school revenues depend primarily on local property taxes. If a significant part of the population is being subsidized to send its children to private schools, the task of creating meaningful support for the public system will be increasingly difficult. Given the critical financial situation of the public schools, especially in urban areas, to weaken them further could have extremely serious effects.[86]

Opponents of tuition tax credits fear that such credits might even undermine existing federal financial assistance programs.

Proponents of tuition tax credits state that even with the 50 percent tax credit, parents will still have to pay at least 50 percent of the tuition cost of their children's education, as well as other fees and expenses. The tuition tax credit bill does not give private schools parity with public schools in terms of public funding. It merely gives a partial break to those parents who exercise a constitutionally recognized freedom of choice. An extra cost would still be imposed upon those parents who select private education, but the cost would be reduced. Public schools still would have a strong comparative advantage.

Senator Moynihan has said, "I for one refuse to accept the proposition that our public schools have fallen on such hard times that they can only attract students and support in the future if they enjoy a monopoly in primary and secondary education."[87]

Representative Barber B. Conable, Jr. (R-N.Y.) seeks to place figures cited by Secretary Califano for elementary and secondary school pupils in perspective. If the one-fourth of tuition tax credits, which the Joint Committee on Taxation estimates will benefit primary and secondary school pupils, is divided by the number of such pupils currently in nonpublic schools, the per-pupil benefit would be $251. Adding this to existing federal assistance, which Representative Conable puts between $55 and $75 (compared with Secretary Califano's $60), provides total federal assistance in the range of $306 to $326 per pupil. On the side of the public school pupil, however, Representative Conable would count the tax deductions which public school parents claim for state and local taxes and which he puts at $110 per child. This sum added to the $128 in federal assistance referred to by Secretary Califano yields a total which, according to Representative Conable, is very little more than the federal benefits to private school students and therefore offers no risk of swamping the public schools. In addition, public schools receive up to $3,000 per child from state and local governments, while private schools receive nothing or very little per pupil from such bodies.[88] In response to the argument that tax credits would contribute to the destruction of public schools Walter Williams stated:

> The public education establishment is saying that if their state-granted monopoly powers are reduced, they would be destroyed. "Destroyed" is too strong a term because many, many public schools are performing a good job of educating America's youth. The only public schools that would be threatened by "tariff removal" are those public schools failing to do a job at least as good as its nearby competitor. . . . Such an outcome is consistent with the kind of market efficiency that has led us to be the strongest and richest nation in the history of mankind, i.e., the weeding out of the inefficient producers and their replacement with efficient producers.[89]

Senator Packwood argues that providing $900 million or even more in tax credits to families with children in primary and secondary schools (when public schools receive $65 billion from state and federal taxes) does not begin to threaten public schools. Others argue that, given rough equivalence in quality between public and private schools, there will be a strong economic incentive to choose the public over the private school. The tuition tax credit legislation would simply inject a competitive stimulus into the tired

veins of public school administration. Tax credits would actually help public schools because competition would stimulate them to do a better, more cost-effective job.[90]

Tax credit proponents deny that enacting legislation to provide such credits would threaten current federal grant and loan programs. First, section 2(e) of S. 3946 expressly preserves eligibility for other grant and loan programs, both state and federal, and the committee report reinforces that thrust of the bill.[91] Second, proponents state that they are willing to combine grants and loans with tax credits and to give the consumer a choice. If the consumer preference were for grants or loans that choice would be acceptable to proponents of tuition tax credits.

Because tuition for nonpublic colleges is in the range of $4,500 per year, as opposed to $2,500 at public colleges, most people do not think enactment of tuition tax credits would result in a shift of large numbers of students to private colleges.

Effect on Nonpublic Schools

Proponents of tuition tax credits argue that the administration's proposal, which extends and broadens existing government programs, will simply hasten the demise of nonpublic education. They quote U.S. Commerce Department statistics to show that nonpublic elementary schools have lost 35 percent of their enrollment in the last ten years, and nonpublic high school enrollment has dropped by 13 percent, even though total secondary enrollment for the country rose by 18 percent. Similarly, the proportion of college students choosing nonpublic colleges has dropped from 50 percent in the early 1950s to 25 percent today. Rising educational costs are primarily at fault.[92] President Carter cited average costs of $4,500 per year for private higher education and $2,500 for public universities. Continued inflation of educational costs will simply make matters worse. Under the current system, parents who send their children to private elementary and secondary schools face a double burden. They must pay tuition for private schools as well as taxes, particularly local taxes, which fund only public schools. Supporters of tuition tax credits believe this to be unfair. Chief Justice Warren E. Burger believes, "It is no more than simple equity to grant partial relief to parents who support the public schools they do not use."[93]

Opponents of tax credits for primary and elementary school students do not accept the argument that equity requires relief for families of private school pupils. They argue that the Constitution provides the controlling standard, and if parents wish to send their children to private schools, they should not expect a subsidy or tax credit. George A. Humphrey of the American Federation of Teachers (AFL-CIO) cites studies of Catholic education from which he concludes that high tuition charges are not the reason why Catholic elementary and secondary schools are losing students; consequently, he does not think that tuition tax credits will reverse the trend.[94]

Some opponents of tuition tax credits believe such credits may actually place private colleges and universities at a disadvantage. Acting Assistant Treasury Secretary Lubick argued that although tax credits would reduce the *absolute* cost of attending private

colleges, they would increase the cost of attending private colleges relative to the cost of attending a public college. He believes that tuition tax credits may decrease the competitiveness of private colleges.[95]

In response, proponents of tax credits claim:

> Contrary to the views of many, tax credits will aid independent colleges relatively more than public colleges. Some organizational spokesmen argue that a $500 tax credit will redistribute students to the public sector because the amount is a much larger proportion of public than it is of private college tuitions. This reasoning belies proven economic theory. When buyers effectively experience an increase in money income, they substitute more expensive goods for less expensive ones, not the opposite. Increases in wealth witness the substitution of butter for margarine and Cadillacs for Chevrolets, not vice versa.[96]

Constitutional Concerns

Most arguments to the effect that tuition tax credits are not constitutional are based on the implications of U.S. Supreme Court decisions. The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

The administration's proposal, and S. 2539 and H.R. 11274, continues existing grant and loan programs for postsecondary students. Although a number of these students attend nonpublic educational institutions, some of which are parochial schools, the criticism of unconstitutionality is not leveled against the grant and loan programs now being administered by HEW.

The tuition tax credit bill, H.R. 3946 as amended in the Senate Finance Committee, would go beyond providing a tax credit to college students, and would make similar credits available to parents of pupils at primary and secondary schools. Although no distinction is drawn between public and nonpublic schools in the bill, under state law no tuition charges apply in most primary and secondary public schools. The argument centers on the fact that many of the nonpublic schools that would benefit from tuition tax credits are conducted by religious institutions. Opponents of tax credits cite Thomas Jefferson's statement that "To compel a man to furnish through taxation contributions for the propagation of religion in which he disbelieves is sinful and tyrannical." They contend this is exactly what tax credits would do, and that they would violate the Establishment Clause of the First Amendment.

One opponent of tuition tax credits at the elementary and secondary level stated that tax funds may be used by religious schools to provide health and welfare services, such as medical and dental care or meals. The Supreme Court has upheld the constitutionality of laws financing transportation to religious schools and the purchase of secular textbooks that are loaned to parochial school pupils. In every decision since 1968, however, the Court has refused to go beyond transportation and textbooks. "Every legislative effort to

channel tax-raised funds to elementary and secondary religious schools, directly or indirectly, has been held violative of the Establishment Clause."[97]

Supreme Court cases are said to have invalidated a purchase-of-services statute financed from the proceeds of horseracing; a purchase-of-services statute financed from the general treasury; a salary supplement law; a statute providing tuition payments for low-income families; a tuition reimbursement law; a general tuition grants law; statutory grants to pay for legally required services performed in parochial schools; a statute providing tax reductions for parents of parochial school pupils; a statute providing auxiliary services, instructional materials, and instructional equipment to private and parochial schools; and a law designed to finance the purchase of instructional materials and equipment to be loaned to the pupils and parents of pupils in religious schools and to finance field trips and visits to governmental, industrial, cultural, and scientific centers designed to enrich the secular studies of students.

Opponents of tax credits believe that the Supreme Court has already ruled tuition tax credits to be unconstitutional. They cite *Committee for Public Education* v. *Nyquist*, 413 U.S. 756 (1973) in which the Court held unconstitutional a New York statute that provided state income tax relief. One witness described the tax relief system invalidated in the Nyquist case as follows:

> Under the New York law there involved, parents were permitted to subtract from their adjusted gross income for state income tax purposes a designated amount for each child for whom they paid at least $50 tuition. . . . The higher the income, the lower the subtraction; if the income exceeded $25,000, no subtraction was allowed.[98]

Opponents of tax credits believe that bills which purport to provide tax relief to parents are in lieu of direct aid to nonpublic schools and are attempts to circumvent the constitutional prohibition that bars such direct aid. They believe that the Supreme Court will not allow this assistance but will view parents as merely a conduit of federal funds to religious schools. It is argued by some that if there is any doubt as to the constitutionality of proposed legislation, it is not good public policy to enact that legislation.

Supporters of tuition tax credits respond by claiming that the New York statute invalidated by the Nyquist decision is different from that proposed in legislation to establish a federal tuition tax credit. A significant difference is said to be the fact that federal rather than state legislation would be involved.

> It is unquestionable that the Supreme Court—in this field even more than in most—is more disposed to accord validity to the acts of this Congress than to those of state legislatures. . . . Only one minor feature of any federal aid-to-education provision has been invalidated on establishment clause grounds. . . . In the individual states, where, not infrequently, a single denomination accounts for a majority or a near majority of the electorate, the danger that the legislature will aid a particular religion under the guise of pursuing purely secular, governmental ends is sometimes acute, and justifies particularly rigorous application of anti-establishment principles, even at the expense of

other constitutional values which might otherwise predominate. In the national legislature, by contrast, no single religious sect predominates, and the danger of sectarian action in favor of a particular group is negligible.[99]

Proponents of tuition tax credits claim that, in the only related case in which federal legislation was involved, *Tilton* v. *Richardson*, the Supreme Court upheld grants under the Higher Education Facilities Act for the construction of academic buildings at church-related and other colleges insofar as their use is nonsectarian.[100] One witness quoted constitutional law scholar Edward S. Corwin. "The historical record shows beyond peradventure that the core idea of 'an establishment of religion' comprises the idea of *preference*; and that any act of public authority favorable to religion in general cannot, without manifest falsification of history, be brought under the ban of that phrase."[101] Thus, early Congresses saw the First Amendment to be neutral between different religions but not neutral between religion and irreligion. Thus they provided support to those private institutions, such as churches, which performed public or secular services.[102]

Opponents of tuition tax credits for elementary and secondary school pupils discount this history in the light of more recent Supreme Court decisions and cite the three-pronged test set forth by the Supreme Court in *Lemon* v. *Kurtzman*:

> First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . . finally, the statute must not foster an "excessive government entanglement with religion."[103]

In his letter of March 17, 1978, to Secretary Califano, Attorney General Griffin Bell, relying on an internal Justice Department memorandum, concluded that tuition tax credits for college students would not be held unconstitutional, but he expressed a contrary view as to the constitutionality of tuition tax credits for primary and secondary school pupils. The memorandum on which the attorney general relied noted that 85 percent of the nonpublic elementary and secondary schools are parochial schools. The Justice Department memo notes the Supreme Court's acknowledgment in *Lemon* v. *Kurtzman* that the state's three-pronged legislative purposes—to preserve a healthy, safe educational environment for all schoolchildren, to promote pluralism and diversity in education, and to prevent further overburdening of the public school system—were secular and appropriate. The second prong of the test, however, was thought to present an obstacle to a ruling of constitutionality. The memo notes that the proposal would benefit institutions whose role is to emphasize religious training and beliefs, and that sectarian schools would benefit in significantly larger numbers than nonsectarian schools. The memo further notes that comments and testimony on the tuition tax credit bill leave little doubt that the Congress is aware of the differences between the application of the credit to colleges, on the one hand, and to primary and secondary schools on the other. Limiting relief to a percentage of the total as a means of segregating the cost of religious instruction was rejected by the Court in the Nyquist case. The tax credit bill makes no other attempt to segregate sectarian and religious educational costs.

Proponents of tax credits counter by noting that not only is no distinction made in the tuition tax credit bill between tuition at public and nonpublic schools, but also that the Supreme Court has upheld property tax exemptions to houses of worship as constitutional in *Walz* v. *Tax Commissioner*. In this case, the Court noted that taxation might in fact involve serious governmental pressures upon the free exercise of religion and might invite excessive governmental-religious entanglements.[104] In addition, contributions to religious schools and indeed churches themselves are sanctioned as tax deductible. Proponents point out that the Court has recently upheld capital grants to church-related colleges. Tax credits are even less objectionable in that they are not made directly to the schools involved. They are made in the context of the income tax laws that are clearly within the constitutional power of the Congress. Tax deductions for gifts to religious schools have been declared constitutional; by a parity of reasoning, tax credits to pupils at such schools are also constitutional.

Opponents of tax credits believe that, because the plan provides credits that are refundable to persons whose tax liability is less than the value of the tuition credit, the entire program has been transformed into a tuition reimbursement plan. Moreover, since these federal payments are designed to be spent in private schools, if they are spent in sectarian schools they will be regarded as an aid to religion. Supporters of tax credits disagree.

> It is not unreasonable . . . to view the refunded credit to persons who do not qualify for income tax as a refund offsetting other taxes that they pay. Moreover, because a person does not pay income tax in the current period, this is not to say that he will not pay it in future periods of his lifetime. Indeed, the correct way to view the individual taxpayer's contribution to education is as a contribution from his lifetime income.[105]

In terms of the "entanglement" test of constitutionality, opponents of tuition tax credits rely on the Supreme Court's prior rejection of attempts to distinguish between aid paid to sectarian schools and that paid to parents of pupils at such schools. Note is taken that the Supreme Court disregards the labels attached to aid measures in determining their constitutionality. Both the Nyquist and Lemon decisions of the Court indicated the grave potential for entanglement in the possibility of continuing strife over aid to religion. Even though tax credits would not require annual appropriations, rising costs would promote political action to obtain greater benefits, and there is no guarantee that comprehensive measures of government surveillance and control would not follow at a later time, as noted in the Lemon case. According to opponents, the political divisiveness inherent in the legislative proposal for tuition tax credits for parents of elementary and secondary pupils causes the proposal to fail the "entanglement" test. In their view the proposal thus fails two of the three tests, and failure of one test is sufficient to render it unconstitutional.

Proponents of tax credits argue that there would be little government entanglement with religion. The government's dealings would be with taxpayers, not with schools. The only administrative involvement of government with schools would be in the process of determining eligibility. Similar judgments are currently made under other statutes for colleges, universities, and vocational schools, and there would be no more entanglement than in these instances. State approval of elementary and secondary schools is already a

matter of policy in most states. In the few states without certification processes, states must make these decisions in any case in administering compulsory education laws. Only schools exempted under section 501(c)(3) of the Internal Revenue Code would be eligible, and these determinations are already being made.

NOTES TO TEXT

[1]Reprinted in U.S. Congress, House of Representatives, Committee on Ways and Means, *Hearings on Tax Credits for Nonpublic Education*, 92nd Congress, 2nd session, August 1972, pp. 107–171.

[2]"The Federal Responsibility in Education," *Weekly Compilation of Presidential Documents*, October 30, 1972, p. 1564.

[3]Representative William Frenzel, testimony before the U.S. Congress, House of Representatives, Committee on Ways and Means, February 14, 1978 (mimeo), p. 1.

[4]Ibid., p. 2.

[5]Congressional Budget Office, *Federal Aid to Postsecondary Students: Tax Allowances and Alternative Subsidies* (Washington, D.C., January 1978), pp. 59–61.

[6]Congressional Budget Office, *Federal Aid to Postsecondary Students*, pp. 61–63.

[7]*Congressional Record*, vol. 122 (August 5, 1976), pp. S 13560–S 13565.

[8]U.S. Congress, House of Representatives, Committee on Ways and Means, *Hearings on Tax Credits for Nonpublic Education*, 92nd Congress, 2nd session, August and September 1972, in three parts.

[9]*Congressional Quarterly*, vol. 35 (September 17, 1977), p. 1951.

[10]Senate Report 95-642, p. 4.

[11]This bill, S. 2539, was favorably reported by the Senate Human Resources Committee, accompanied by Senate Report 95-643.

[12]House Report 95-951.

[13]As this goes to press, the House Ways and Means Committee has not reported a tuition tax credit bill. An administration attempt to bypass the House Rules Committee and bring H.R. 11274 directly to the floor for adoption or rejection without amendments failed. The Ways and Means Committee has scheduled markup sessions on a tax credit bill to permit the House to consider such an approach along with H.R. 11274.

[14]*Congressional Record*, vol. 123 (September 26, 1977), p. S 15625.

[15]Ibid., p. S 15629.

[16]Ibid., p. S 15625.

[17]Larry L. Leslie, professor of higher education, University of Arizona, testimony before the U.S. Congress, House of Representatives, Committee on Ways and Means, February 15, 1978 (mimeo), p. 5.

[18]E. G. West, testimony before the U.S. Congress, Senate, Subcommittee on Taxation and Debt Management of the Committee on Finance, January 18, 1978 (mimeo), p. 4.

[19]"Middle-Income College Enrollment Found Up Again," *Washington Post*, March 14, 1978, p. A-7.

[20]Florence Flast, testimony before the U.S. Congress, Senate, Subcommittee on Taxation and Debt Management of the Committee on Finance, January 19, 1978 (mimeo), pp. 7–8.

[21]Donald Lubick, acting assistant secretary of the Treasury, testimony before the U.S. Congress, Senate, Subcommittee on Taxation and Debt Management of the Committee on Finance, January 19, 1978 (mimeo), pp. 3, 6.

[22]Leslie, testimony, pp. 6–7.

[23]Ibid., pp. 7–8. See also Table 1.

[24]Melvin Eggers, Commission on Independent Colleges and Universities, testimony before the U.S. Congress, Senate, Subcommittee on Taxation and Debt Management of the Committee on Finance, January 20, 1978 (mimeo), p. 2.

[25]Frenzel, testimony, p. 5.

[26]William B. Ball, attorney, testimony before the U.S. Congress, House of Representatives, Committee on Ways and Means, February 14, 1978 (mimeo), p. 2.

[27]Ernest L. Boyer, speech before the Nonpublic School National Convention on November 29, 1977, quoted in William P. Gallagher, executive director, New York Federation of Catholic School Parents, testimony before the U.S. Congress, House of Representatives, Committee on Ways and Means, February 15, 1978 (mimeo), p. 2.

[28]268 U.S. 510 (1925).

[29]"Grants vs. Tax Credits," *Washington Star*, February 10, 1978, p. A-10.

[30]Henry D. Paley, president, Commission on Independent Colleges and Universities, testimony before the U.S. Congress, House of Representatives, Committee on Ways and Means, February 15, 1978 (mimeo), p. 2.

[31]Robert W. Mayer, assistant vice president for student service, University of Delaware, testimony before the U.S. Congress, House of Representatives, Committee on Ways and Means, February 16, 1978 (mimeo), p. 1.

[32]Leslie, testimony, pp. 9–10.

[33]William Claiborne, "Tuition Tax Credit Major Legislation," *Washington Post*, December 14, 1977, p. A-2.

[34]Gregory Humphrey, codirector of legislation, American Federation of Teachers (AFL-CIO), testimony before the U.S. Congress, Senate, Subcommittee on Taxation and Debt Management of the Committee on Finance, January 19, 1978 (mimeo), pp. 3–5.

[35]Senate Report 95-642, p. 8.

[36]Senate Report 95-643, pp. 11–13.

[37]House Report 95-951, pp. 19–21.

[38]Senate Report 95-642, p. 3.

[39]Grace Baisinger, president of the National Congress of Parent Teacher Associations, testimony before the U.S. Congress, Senate, Subcommittee on Taxation and Debt Management of the Committee on Finance, January 18, 1978 (mimeo), pp. 1–2.

[40]Lubick, testimony, pp. 8–9.

[41]Edward F. Spiers, executive director, Citizens for Educational Freedom, testimony before the U.S. Congress, Senate, Subcommittee on Taxation and Debt Management of the Committee on Finance, January 18, 1978 (mimeo), p. 11.

[42]Harold J. T. Isenberg, president, Local 2092, Federation of Catholic Teachers, American Federation of Teachers (AFL-CIO), testimony before the U.S. Congress, Senate, Subcommittee on Taxation and Debt Management of the Committee on Finance, January 19, 1978 (mimeo), p. 5.

[43]West, testimony, p. 4.

[44]Representative Abner J. Mikva, testimony before the U.S. Congress, Senate, Subcommittee on Taxation and Debt Management of the Committee on Finance, January 20, 1978 (mimeo), pp. 3–4.

[45]"Tuition Fee Trust Fund Suggested for Colleges," Associated Press article, *Washington Post*, February 2, 1978, p. A-20; "New Approach to College Costs," *Providence* [R.I.] *Journal*, January 31, 1978, editorial; House Report 95-951, p. 45.

[46]Senate Report 95-643, p. 9.

[47]Ibid., pp. 9–10.

[48]E. G. West, "Tuition Tax Credit Proposals," *Policy Review* (Winter 1978), pp. 61, 66.

[49]Paley, testimony, p. 2.

[50]*Congressional Record*, vol. 123 (September 26, 1977), p. S 15631.

[51]Student Financial Assistance Study Group, *Report to the Secretary—Recommendations for Improved Management of the Federal Student Aid Programs* (Washington, D.C.: Government Printing Office, June 1977), p. 20.

[52]Eggers, testimony, pp. 1–2.

[53]Senate Report 95-643, p. 3.

[54]Lubick, testimony, pp. 7–8.

[55]Richard D. Warden, assistant secretary for legislation, Department of Health, Education, and Welfare, testimony before the U.S. Congress, Senate, Subcommittee on Taxation and Debt Management of the Committee on Finance, January 19, 1978 (mimeo), p. 5.

[56]Spiers, testimony, p. 10.

[57]Senate Report 95-652, p. 3; *Congressional Record*, vol. 123 (September 26, 1977), p. S 15627.

[58]Thomas Vitullo-Martin, an independent policy analyst, testimony before the U.S. Congress, House of Representatives, Committee on Ways and Means, February 15, 1978 (mimeo), pp. 13–16.

[59] Flast, testimony, p. 6.

[60] Ibid., p. 4.

[61] James V. Bellavia, executive committee chairman, National Association of Catholic School Teachers, testimony before the U.S. Congress, House of Representatives, Committee on Ways and Means, February 14, 1978 (mimeo), p. 7.

[62] Andrew Leigh Gunn, executive director, Americans United for the Separation of Church and State, testimony before the U.S. Congress, Senate, Subcommittee on Taxation and Debt Management of the Committee on Finance, January 19, 1978 (mimeo), p. 4.

[63] Will Davis, president of the National School Boards Association, testimony before the U.S. Congress, Senate, Subcommittee on Taxation and Debt Management of the Committee on Finance, January 19, 1978 (mimeo), p. 7.

[64] Lubick, testimony, pp. 7–8.

[65] Frenzel, testimony, p. 7.

[66] Pierce v. Society of Sisters, 268 U.S. 510 (1925).

[67] *Dallas Morning News*, March 11, 1978, editorial.

[68] Representative Albert H. Quie (R-Minn.) testified:

> I believe the real reason that HEW and many members of the Education and Labor Committee oppose tax credits is bureaucratic—they simply do not want to lose jurisdiction over a major program that affects higher education. After all, there is a lot more opportunity for political mileage in a program of grants. And, of course, with a grant program goes an increase in personnel and a larger empire for all concerned. A tax credit does not carry with it that opportunity for political credit and empire building. After all, there is nothing cheaper or more efficient to administer than a tax credit!

Testimony before the U.S. Congress, House of Representatives, Committee on Ways and Means, February 16, 1978 (mimeo), p. 4.

[69] Senator S. I. Hayakawa, testimony before the U.S. Congress, Senate, Subcommittee on Taxation and Debt Management of the Committee on Finance, January 20, 1978 (mimeo), p. 4.

[70] Victor Solomon, director of educational activities, Congress of Racial Equality, testimony before the U.S. Congress, Senate, Subcommittee on Taxation and Debt Management of the Committee on Finance, January 18, 1978 (mimeo), pp. 2–4.

[71] Isenberg, testimony, p. 5.

[72] Secretary of Health, Education, and Welfare Joseph A. Califano, Jr., testimony before the U.S. Congress, House of Representatives, Committee on Ways and Means, February 14, 1978 (mimeo), p. 6.

[73] Joel Packer, legislative director, National Student Lobby, National Students Association, testimony before the U.S. Congress, House of Representatives, Committee on Ways and Means, February 16, 1978 (mimeo), p. 8.

[74] Gunn, testimony, p. 3.

[75] Senator William Roth, testimony before the U.S. Congress, House of Representatives, Committee on Ways and Means, February 14, 1978 (mimeo), p. 2.

[76]Leslie, testimony, pp. 9–10.

[77]Quie, testimony, p. 4.

[78]Art Pine, "Richer Half of U.S. Pays 94 Pct. of Income Taxes," *Washington Post*, March 13, 1978, p. A-1.

[79]Jon R. Lauer, testimony before the U.S. Congress, House of Representatives, Committee on Ways and Means, February 16, 1978 (mimeo), p. 1.

[80]Mayer, testimony, p. 1.

[81]Leslie, testimony, pp. 9–10.

[82]Warden, testimony, p. 7.

[83]Art Pine, "Senate Unit Votes Tuition Credit, Defies President," *Washington Post*, February 24, 1978, p. A-1; "A Threat to the Public Schools," *Washington Post*, February 27, 1978, p. A-18.

[84]Goldsmith, testimony, p. 3.

[85]Baisinger, testimony, p. 3.

[86]Ibid., p. 2.

[87]"Tax Credit Alarmism," *Washington Star*, March 2, 1978, p. A-8.

[88]*Congressional Record*, vol. 124 (January 21, 1978), p. E 863.

[89]Walter Williams, professor of economics, Temple University, testimony before the U.S. Congress, House of Representatives, Committee on Ways and Means, February 14, 1978 (mimeo), p. 6.

[90]Laurence Silberman, "Tuition Relief: A Boon to *Public* Schools, as Well," *Washington Post*, March 4, 1978. Senator Packwood argues that a $250 tax credit is not likely to move many pupils to public schools, and even if nonpublic schools increase their percentage from 9 percent to the 13 percent which they had at one time, he does not see this as a threat to public schools.

[91]Senate Report 95-642, p. 7.

[92]*Congressional Record*, vol. 123 (September 26, 1977), pp. S 15626–S 15627.

[93]Committee for Public Education v. Nyquist, 413 U.S. 756, 803 (1973).

[94]Humphrey, testimony, pp. 3–5.

[95]Lubick, testimony, p. 6.

[96]Leslie, testimony, pp. 10–11.

[97]Leo Pfeffer, special counsel, American Jewish Congress; general counsel, National Coalition for Public Education and Religious Liberty; general counsel, New York Committee for Public Education and Religious Liberty; testimony before the U.S. Congress, Senate, Subcommittee on Taxation and Debt Management of the Committee on Finance, January 18, 1978 (mimeo), p. 3.

[98]Ibid., p. 5.

[99]Antonin Scalia, former assistant attorney general for the Office of Legal Counsel in the Department of Justice and former chairman, U.S. Administrative Conference, testimony before

the U.S. Congress, Senate, Subcommittee on Taxation and Debt Management of the Committee on Finance, January 19, 1978 (mimeo), pp. 5–7.

[100] 403 U.S. 672 (1971).

[101] Edward S. Corwin, *A Constitution of Powers in a Secular State* (Charlottesville, Va.: Michie Co., 1951), p. 116.

[102] Daniel Patrick Moynihan, "Why Private Schools Merit Public Aid," *Washington Post*, March 5, 1978, pp. C-1, C-4; Walter Berns, professor, University of Toronto, testimony before the U.S. Congress, Senate, Subcommittee on Taxation and Debt Management of the Committee on Finance, January 19, 1978 (mimeo), pp. 1, 4.

[103] 403 U.S. 602, 612-613 (1971).

[104] 397 U.S. 664 (1970). It is also urged that providing a tuition tax credit removes a prior restraint on the free exercise of religion. Thus the credit should be viewed as the elimination of a financial penalty rather than the provision of a new right to state aid. West, testimony, pp. 9–10; Bernard Goldenberg, associate director, Torah Umesorah, National Society of Hebrew Day Schools, testimony before the U.S. Congress, Senate, Subcommittee on Taxation and Debt Management of the Committee on Finance, January 18, 1978 (mimeo), p. 4. Compare the reasoning of the Court in Walz v. Tax Commissioner, 397 U.S. 664 (1970).

[105] West, testimony, p. 10.